

OFT approval of estate agents redress schemes

Criteria - final

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OFT'S CRITERIA FOR APPROVAL OF ESTATE AGENTS REDRESS SCHEMES (REVISED AND FINAL)

Criterion 1

The ombudsman must be independent.

Requirements to meet this criterion

- The ombudsman must be and be seen to be impartial and free from bias.
- The ombudsman must not be appointed by those who are subject to investigation by him. This does not exclude minority representation of those subject to investigation on the appointing body, provided that the body is entitled to appoint only by majority decision. The procedures of any scheme must ensure that no appointments may be made unless the representation on the Board at the meeting making an appointment is such that those who are subject to investigation are in the minority at that meeting.
- The jurisdiction, powers and method of appointment of the ombudsman should be publicised.
- The ombudsman should be appointed for a period of office for sufficient duration to ensure the independence of his actions and not be removable from his duties without just cause. The appointment should be for a minimum of three years and may be renewable.
- The ombudsman should not, during the three years prior to assuming his present function, have occupied a position in the industry to be regulated, remunerated or otherwise, which may cast doubt about his independence from the industry and his ability to reach impartial decisions.
- The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated. Those subject to investigation by the ombudsman should not be entitled to exercise the

power to terminate the ombudsman's appointment, but this does not exclude their minority representation on the body which is authorised to terminate.

- The ombudsman alone (or an appointed deputy) must have the power to decide whether or not a complaint is within the ombudsman's jurisdiction. If it is, the ombudsman (or an appointed deputy) must have the power to determine it.
- The ombudsman should be required to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. At least one member of the reporting body should be from an organisation representing consumers. The body should also be responsible for safeguarding the independence of the ombudsman.

Criterion 2

The scheme must be adequately staffed and funded and be able to demonstrate its ability to attract and retain a sufficient number of potential members to ensure it is viable.

Requirements to meet this criterion

- The scheme must be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the ombudsman to function impartially, efficiently and appropriately.
- The scheme operator should be able to demonstrate that it is likely to be able to attract and retain a sufficient number of members to enable it to offer a viable alternative to other schemes in existence and ensure that it operates in the interests of members and consumers.

Criterion 3

The scheme must be easily accessible to all those entitled to use it.

Requirements to meet this criterion

- The scheme should be directly accessible to complainants.
- The scheme's procedures should be straightforward for complainants to understand and use and not be unduly rigid or formal.
- Those complaining to the ombudsman must be able to do so free of charge.
- The right to complain to the ombudsman should be publicised by each scheme member so that consumers are aware of the scheme at the point at which they choose to use that member.
- The scheme must be easily accessible to complainants without the need for legal representation or assistance.
- The special needs of disadvantaged or vulnerable consumers should be considered so that they, or their representatives, can access the scheme easily.
- The scheme should not deprive the complainant of the right to be represented or assisted by a third party at all stages of the procedure.

Criterion 4

Members of the scheme should be required under the terms of the scheme to have an effective internal complaints procedure set out in writing which should include:

- **full contact details**
- **any information the complainant must provide – this must be reasonable and not require excessive detail or form-filling**
- **reasonable timescales for dealing with the complaint, including a timescale for resolution, and**
- **details of the approved redress scheme and how the complainant can access it.**

Criterion 5

The ombudsman must proceed fairly and in accordance with the principles of natural justice.

Requirements to meet this criterion

- The ombudsman is required to make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law and good practice including the principles of good administration. The ombudsman may take into account such factors as he considers relevant in accordance with such practice including but not limited to any inequitable conduct or maladministration.

Criterion 6

Complainants must be informed that the decision will not be legally binding on them, and that they will have the power to either accept or reject that decision, but that it will be binding on the estate agent if accepted by the complainant. They must also be kept informed of what their alternative or additional actions could be at each stage of the procedures.

Criterion 7

The scheme must make provision for dealing with all types of complaints from actual and potential buyers and sellers of residential property against those engaged in estate agency work in the UK. The scheme's complaints handling procedures must include reasonable timescales for dealing with the complaint, including a timescale for a decision to be made.

Requirements to meet this criterion

The scheme should set out:

- The scope of the matters which may be investigated and determined and the criteria to be used to determine whether a complaint should be investigated.
- The duties and powers of the ombudsman in relation to the investigation and determination of complaints.
- The scope of investigation of complaints concerning non-compliance with voluntary codes of practice or other documents with which scheme members have individually agreed to comply.
- Complaints handling procedures including reasonable timescales at all stages of the process, including a timescale for a decision to be made.

Criterion 8

The scheme's operation and its procedures must be transparent.

Requirements to meet this criterion

The scheme must publicise:

- The types of dispute which may be referred to the scheme.
- The rules governing the referral of matters to the redress scheme.
- The costs of the procedures.
- The decision making arrangements.
- The rules serving as a basis for decisions.
- The legal force of a decision.
- The provision for securing expert advice to assist with an investigation.

The scheme must also:

- Make its decisions and the reasons for them transparent. The names of the parties do not need to be publicised but the content of the complaint and the decision should be.
- In all cases investigated, notify in writing the decision and the reasons for it to the parties concerned.
- Ensure that complainants are provided with clear, comprehensible, and accurate information on the procedure including the process for initiating a complaint, duration of the procedure, possible outcomes, avenues for appeal or review of the decision, and whether the outcome is binding.

- Ensure that wherever possible, complainants are provided with information or help other than legal advice in the completion of necessary forms and documents (for example through the use of standard forms to facilitate the submission of necessary documents).

Scheme operators must:

- Prepare and publish an annual report to the OFT to include details of the outcome of its monitoring and reports of its investigations and decisions.
- Publish easily available information for consumers on the operation of the scheme.

Criterion 9

There must be a free exchange of information between all parties relating to a complaint.

Requirements to meet this criterion

- The procedures must allow all the parties concerned to present their viewpoint before the ombudsman and see the arguments and facts put forward by the other party and any experts' statements. Any request for an oral hearing must be considered by the ombudsman (or his appointed deputy) by reference to the nature of the issues to be determined, and in particular the extent to which the complaint raises issues of credibility or contested facts that cannot be fairly determined by reference to documentary evidence and written submissions. In deciding whether there should be a hearing and, if so, whether it should be in public or private, the ombudsman will have regard to the provisions of the European Convention on Human Rights.
- The ombudsman must have the authority to request and receive all necessary information and documents from those being investigated subject to parties' rights to refuse to disclose information on legal grounds were the matter proceeding in a court.

Criterion 10

There must be a range of awards which take into account the level and type of detriment caused.

Requirements to meet this criterion

The range of awards must include the following:

- Providing an apology or explanation
- Paying compensation
- Taking such other actions in the interests of the complainant as the ombudsman may specify, and
- The level and applicability of awards must be publicised.

Criterion 11

The scheme shall ensure that decisions are implemented and that procedures are in place to deal with non-compliance with the ombudsman's decision and/or the scheme's rules.

Requirements to meet this criterion

- There must be procedures in place to ensure that decisions and the scheme's rules are complied with.
- There must be procedures for non-compliance with decisions and the scheme's rules which include a specified range of sanctions, for example warning letters, fines, expulsions from the scheme, etc.
- The procedures must be fair to the member agent and only allow expulsion for serious issues of non-compliance.

The procedures used to expel a member agent must:

- Be set out clearly and notified to the member at the time of joining the scheme.
- Provide that other sanctions will be adopted in preference to expulsion where appropriate and likely to be effective. Expulsion should be for only the most serious of cases.
- Provide that the person considering expulsion has not been involved in any decisions or issues upon which the expulsion is based.
- Decisions to expel must include the earliest date the agent can apply for readmission and what it is necessary for the agent to do to obtain readmission.
- Provide details of the process to appeal or review the decision.
- The issues around the expulsion may result in the OFT considering the member's fitness to continue to practice under the Estate Agents Act 1979. In these circumstances any decision on expulsion should be delayed until the regulatory proceedings have been determined.
- Provide procedures for application for readmittance after a specified period of time following expulsion including the giving of reasoned decisions.

Criterion 12

Appropriate information on complaints dealt with by the redress scheme must be routinely provided to:

- **Other OFT approved estate agents redress schemes.**
- **Other consumer redress schemes.**
- **The OFT or any other person/organisation exercising regulatory functions in relation to the activities of persons engaging in estate agency work.**

Requirements to meet this criterion

- Agreements such as Memoranda of Understanding or similar should be made with other organisations as appropriate.
- Information provided to the OFT or other regulators must include the names and details of the parties involved.
- Procedures ensuring compliance with the Data Protection Act 1998 must be adopted.

Criterion 13

Membership requirements to join the scheme must be fair and ensure that all those who are required to sign up to a redress scheme can do so.

Requirements to meet this criterion

- Membership requirements must not unfairly restrict access to the scheme.
- Only estate agents who have been expelled from a scheme and have not met the requirements for reinstatement, or those who have been banned

by the OFT in accordance with section 3 of the 1979 Estate Agents Act can be excluded from membership.

- A compulsory requirement to sign up or comply with a voluntary code of practice cannot form part of the membership criteria.

Criterion 14

The scheme's effectiveness must be monitored on a regular basis.

Requirements to meet this criterion

- Performance indicators on the scheme's operation to be agreed with the OFT.
- Scheme operator to provide information on customer satisfaction surveys and performance indicators to the OFT at specified intervals.

Criterion 15

The scheme operator must publicise the scheme to consumers and to existing and potential members.

Requirements to meet this criterion

- Consumers will need to be made aware of the scheme at the point at which they make a choice to use an estate agent.
- Scheme operators must implement marketing and awareness plans to raise awareness of the scheme to consumers and estate agents. Such plans should incorporate measures to make consumers aware of its scheme at the point at which they choose to use that estate agent.

Criterion 16

There must be procedures in place to consider and resolve complaints by consumers or member businesses about the service provided by the ombudsman.

Requirements to meet this criterion

- These procedures should relate only to the service provided by the ombudsman when dealing with the case and not to the decision itself.
- The final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved.