

Terms of Reference

1. On behalf of The Property Ombudsman (TPO) Council the Disciplinary and Standards Committee (DSC) will consider all disciplinary matters referred to it relating to Member Agents, who have agreed to follow the TPO voluntary Codes of Practice and/or to comply with other obligations on Members and those sales agents who have chosen only to register with TPO under the OFT Approved Redress Scheme, established by the Consumers Estate Agents and Redress Act 2007 (CEARA).
2. For Member Agents of the TPO cases may be considered concerning:
 - non-compliance with the Code/s of Practice. The Ombudsman, acting within his Terms of Reference, brings to the DSC's attention any cases where he considers there has been any single flagrant breach and/or any persistent breaches of the Code by a Member;
 - instances where Members have also failed to meet their obligations under the Consumers, Estate Agents and Redress Act 2007. However it is most unlikely that a voluntary Member who failed in this way would not also fail to meet their voluntary obligations;
 - other significant failures to comply with membership obligations.
3. The DSC will consider instances where those sales agents only registered under the OFT Approved Redress Scheme who have:
 - failed to meet both common law or statutory obligations;
 - failed to publicise the OFT Approved Redress Scheme to buyers and sellers;
 - failed to comply with the rules of the OFT Approved Redress Scheme;
 - failed to operate an effective internal complaints procedure; and/or
 - failed to pay awards or comply with other sanctions imposed by the Ombudsman.
4. The DSC will also consider those cases where it appears to the Ombudsman that sales agents registered only under the OFT Approved Redress Scheme have not had 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". There is nothing to prevent the Ombudsman referring additional cases to the DSC when, in his opinion, the circumstances so warrant.
5. The DSC will seek such additional information as it needs to formulate a view of the case, including seeking representations (written and oral) from the agent on its proposed recommendation.
6. If the DSC decides to take disciplinary action against the agent, (whether or not the agent has previously made representations to DSC) the agent has the right to appeal against that recommendation and make further written and/or oral representations to a group of independent members of the TPO Council (the Council) who are not also members of the DSC.
7. In assessing the severity of the non-compliance, the DSC will have regard to:
 - persistence in failing to comply with the rules of the OFT Approved Redress Scheme; and, for a TPO Member Agent, failures to comply with the relevant Code of Practice; and the decisions of the Ombudsman;
 - single but serious breaches;
 - non-compliance where the consequences were foreseeable or deliberate and/or to the advantage of the agent.
8. In addition the DSC will assist and advise the full Council by considering:
 - reports from the Board concerning Members failing to meet the requirements of the Compliance and Satisfaction Monitoring process;
 - other instances of non-compliance, where third parties, competitors or consumers not making a formal complaint have raised issues concerning a Member;
 - how the Council should respond to the actions of third parties (regulators and professional organisations to which the Member also belongs) that bring into question continuing membership of TPO.
9. The DSC may also, when asked, give advice to the Ombudsman or to the Board, on issues concerning the interpretation of the Codes of Practice or the development of Best Practice. Such recommendations would generally be made via the whole Council.
10. More detail on procedures in disciplinary cases can be found in the procedure guide.