

Guidance for Registered Agents and Statutory Redress Arrangements

THE PROPERTY OMBUDSMAN

OFT Approved Estate Agents Redress Scheme

Under the Consumers, Estate Agents and Redress Act 2007, your firm is required to join a scheme to provide redress to those actual or potential buyers and sellers of residential property who have a dispute with your firm and where that dispute has not been resolved by the parties. The Property Ombudsman Estate Agents Redress Scheme (TPO EARS) has been approved by the Office of Fair Trading to provide the redress arrangements.

Key Features Of The Redress Arrangements

1. You must promote to actual or potential buyers and sellers of residential property the existence of the redress scheme. This should be done by providing, free of charge, copies of the TPO Consumer Guide at the time an instruction to sell a property is received and if a consumer requests a copy. Copies of the TPO Consumer Guide should be clearly displayed in your branch.
2. You are required to provide a further copy of the TPO Consumer Guide to the seller and buyer when you issue the memorandum of sale.
3. You are required to provide a copy of the TPO Consumer Guide to potential buyers on the first occasion of sending property details by hard copy or electronically.
4. You are required to display the relevant logos in your branch window.
5. You must have in place and operate an in-house complaints procedure which must be stated in writing and explain how consumers can pursue a complaint through your firm and through the Ombudsman.
6. Following the conclusion of your investigation into the matter a written statement giving your final view point and including any offer must be sent to the complainant and advising how the matter can be brought before the Ombudsman.
7. The Ombudsman can only accept a complaint if it is referred to him by the complainant within six months of the date of your firm's final viewpoint letter. You should state this clearly in your letter to the complainant.
8. In order to pursue his investigation the Ombudsman will require you to provide your branch/company file and other relevant documentation.
9. The Ombudsman may seek further clarification from you or third parties if that is relevant.
10. The Ombudsman is not bound by any rule of legal evidence and cannot take evidence on oath or cross examine witnesses. He usually reaches his decision based on the evidence available to him, on common sense and what appears to him to be fair and reasonable in the circumstances.
11. However, any request for an oral hearing will 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 will give reasons in writing, if he declines to grant a hearing.
12. If the Ombudsman finds against your firm he will send you his proposed decision before it is sent to the complainant. At that point you will be able to represent against his findings.
13. The Ombudsman can criticise your firm for any failings or breaches of his best practice guidance and direct you to change your practice. He can make you apologise to the complainant. He can make an award in full and final settlement of up to £25,000 by way of compensation for quantifiable loss, expense, avoidable aggravation, distress and inconvenience in relation to the subject matter of the complaint. Ombudsman's awards are not punitive.
14. If the complainant accepts the Ombudsman's award it becomes binding on you and you are required to pay the award or act upon any directions made by the Ombudsman promptly.
15. Where the Ombudsman feels that the actions of an agent warrant disciplinary action (for example where an agent has deliberately misled a consumer), he will refer that matter to the TPO EARS Disciplinary Committee which will consider what action is to be taken. The Ombudsman or the TPO EARS Disciplinary Committee may refer any appropriate matters to the OFT. A copy of the TPO EARS Disciplinary Committee Terms of Reference and disciplinary arrangements is included with your registration pack.
16. If you are dissatisfied with the way in which we have handled a complaint made against your firm, you should bring your concerns to the attention of the Ombudsman. If you remain dissatisfied, you may at the end of the process raise your concerns with the Independent Reviewer. His remit is to consider complaints about our service and not about the merits of the Ombudsman's decision. Full details of the Independent Reviewer's remit can be found on our website www.tpos.co.uk or requested from the office.

