

Procedures to be used by the EARS Disciplinary Committee (EARS-DC)

THE PROPERTY OMBUDSMAN

OFT Approved Estate Agents Redress Scheme

1 Disciplinary Procedures

1.1 The EARS-DC will comprise two Independent Members of the TPO Council (Council), one of whom will act as Chairman, and one Member of the Board, not party to the matters to be discussed. Before commencing the consideration of any disciplinary matter, the EARS-DC will ensure that each of its members has had no involvement in any decisions or issues on which the disciplinary action is based.

1.2 These procedures will be followed by the EARS-DC when considering disciplinary matters referred by the Ombudsman or when a third party has raised relevant issues concerning the registered agent's failure to meet his obligations under the Consumers Estate Agents and Redress Act 2007 (CEARA).

1.3 On commencing consideration of a case which may lead to disciplinary action, the EARS-DC will inform the EARS agent that the matter is now subject to its consideration and will also provide information of the case to the OFT and to other redress schemes approved under CEARA.

1.4 The EARS-DC will consider all the cases referred to it. The EARS-DC will receive information from the Ombudsman and may seek clarification from the Ombudsman, as appropriate.

1.5 The EARS-DC will prepare a written report setting out the actions that it recommends. Where the report of the EARS-DC contains no recommendation as to disciplinary action it will inform the EARS agent of this in writing.

1.6 Where the report of the EARS-DC recommends disciplinary action, its report will be sent to the EARS agent, who will be invited to make written and/or oral representations against the recommendation. Such representations should, unless in exceptional circumstances, be made within 4 weeks of receipt by the EARS agent of the recommendation.

1.7 The EARS-DC will meet to consider both written and/or oral representations presented by the EARS agent. If the agent requests a hearing he may present his own case or be assisted by his solicitor or another third party. In these circumstances the EARS-DC may be assisted by its own legal adviser or another appropriate third party.

1.8 The EARS-DC will prepare a final written report of its decision as a result of those representations. If the EARS-DC continues to recommend disciplinary action, the EARS agent will be informed of this in writing and will further be advised in writing that they can appeal the decision. The appeal (written or oral) should, unless in exceptional circumstances, be made within 4 weeks of receipt by the EARS agent of the final written report from the EARS-DC.

2 Appeals

2.1 The Appeals Committee will comprise three independent members of the Council who have not been involved in the initial determination of the disciplinary matter.

2.2 The Appeals Committee will consider both written and/or oral representations presented by the EARS agent. If the agent requests a hearing before the Appeals Committee, he may present his own case or be assisted by his solicitor or another third party. In these circumstances the Appeals Committee may be assisted by its own legal adviser or another appropriate third party.

3 Disciplinary sanctions

3.1 As a result of its consideration, the EARS-DC can:

- Demand that the agent apologise.
- Demand that the agent change its procedures or documentation.
- Issue an informal warning (to be issued by the Ombudsman).
- Issue a formal warning (to be issued by the Chairman of the Council).
- Issue a formal warning that will be publicised in the media, to regulatory authorities, other redress schemes approved under CEARA, and to any professional organisation of which the EARS agent is a member.
- Levy a fine against the agent.*
- Levy a fine against the agent and publicise the matter.*
- Expulsion (subject to any on-going OFT investigation under Section 3 of the Estate Agents Act 1979)*.

** Cases resulting in fines or expulsions will be limited to those cases involving serious breaches or failures to comply with the rules and obligations of EARS, and/or failures to pay awards or comply with the Ombudsman's decisions or directions. In such cases it is likely that lesser sanctions will have already been applied and failed to secure changes in the conduct of the EARS agent's estate agency business.*

Expulsion will only be used in the most severe of cases, where appropriate and where the EARS-DC and/or the Appeals Committee considers that it is the only sanction likely to be effective.

4 Expulsion and Re-admittance

4.1 Any decision of the EARS-DC to expel an EARS agent from EARS will be provided to the agent by the Council with full written reasons, an explanation of what the agent must do to regain membership and any applicable timescale for re-admittance. For the avoidance of doubt an EARS agent against whom the OFT has made a prohibition order will be removed from the Register.

4.2 Any decision to expel an agent from EARS will be executed by the Board. The Board's role is solely to confirm the decision of the EARS-DC and it has no part in reaching the decision to expel.

5 Other matters

5.1 The EARS-DC may from time to time provide guidance to the Ombudsman as to the types of cases to be referred to it for its consideration.

5.2 During the referral or consideration of any disciplinary action, both the EARS-DC and the Ombudsman have a duty to consider whether the matter is one which raises the EARS Agent's fitness to continue engaging in estate agency work and accordingly whether it should be reported directly to the OFT because it appears to trigger action under Section 3 of the Estate Agents Act 1979.