Memorandum of Understanding (MOU)  
between  
The Property Ombudsman  
The Property Redress Scheme  

1. The Parties  

The Property Ombudsman (TPO) scheme provides a facility for the independent and impartial resolution of disputes between any small commercial business, charity or consumer (who may be an actual or potential buyer, seller, landlord, leaseholder, lessee or tenant of property or who has otherwise become involved) and firms that are directly members of the scheme or who are subject to the Ombudsman’s jurisdiction, in relation to the carrying out of relevant estate and/or letting agency and/or property management work by those firms in the UK, Channel Islands and the Isle of Man. The Property Ombudsman is a private, not-for-profit company limited by guarantee. A Council which is independent of the member firms appoints the Ombudsman and sets the Ombudsman’s Terms of Reference.  

The Property Redress Scheme (PRS) is a consumer redress scheme for the property industry. Property Agents and Professionals can join to fulfil either their statutory or voluntary consumer redress requirements. The PRS offers an independent and impartial dispute resolution process whereby we assess the case and try to help the parties reach agreement in the first instance. If this is not possible then the Head of Redress will make a binding decision on the resolution of the complaint. The PRS operates under its Terms of Reference and has appointed an Advisory Council which is an independent Council of industry representatives. The Advisory Council oversees and scrutinises the scheme, its processes and holds the Head of Redress to account.  

The Property Ombudsman and the Property Redress Scheme (‘the two schemes’) offer independent dispute resolution to consumers and promote best practice by their participating companies/members.  

2. The purpose of this MOU  

The two schemes have agreed to establish this MOU with the aims of ensuring where relevant and appropriate and taking into account any statutory obligations:  

- the seamless redirection of complaints to the correct scheme;  
- consistency of treatment of cases;  
- ongoing communications between the two schemes;  
- establishing what information is needed to further the effective resolution of cases; and  
- the sharing of information, including membership information on participating companies/members where appropriate, subject to any legal constraints including the need to respect personal or commercial confidentiality, to help enable the organisations to effectively resolve cases and fulfil their respective functions.
3. Terms of Reference

The two schemes recognise their respective Terms of Reference. The Property Ombudsman’s Terms of Reference are attached at Annex A. The Terms of Reference for the Property Redress Scheme are attached at Annex B. The Terms of Reference are kept under review by the respective governing bodies.

4. Codes of Practice

Member firms of The Property Ombudsman have agreed to adhere to The Property Ombudsman Code of Practice; and all legal and regulatory obligations. The Code of Practice for Residential Sales Agents and that for Residential Letting Agents have been approved by the Chartered Trading Standards Institute (CTSI) under its Consumer Codes Approval Scheme. Separate Codes in relation to the Scottish market have also gained CTSI approval.

The Property Redress Scheme will consider any relevant statutory code of practice, and legal or regulatory obligation relating to the work a Member undertakes and also any Code of Practice that a Member has voluntarily entered into as a result of its membership of another organisation.

5. Provision of Information

Information is available through the publication of information by the two schemes in their respective Annual Reports, websites and other material. This includes the publication of statistics about the number and type of complaints, the results of customer and member satisfaction surveys and anonymised summaries of individual complaints to give a broad overview of the complaints considered and determined. Where circumstances will benefit the complainant or it is in the public interest, they may exchange other information necessary to bring about a resolution to a dispute. The exchange of information is subject to any statutory restriction including data protection. In addition to this, the two schemes where appropriate or where required by any statute will exchange information of a statistical nature regarding enquiries and complaints. Information will also be exchanged about Member firms / participating companies where necessary in the public interest.

6. Transfer between Schemes

The two schemes agree to notify each other of any company within their schemes which fails to comply with an award within a reasonable time or becomes subject to any disciplinary procedures. Where such instances occur, any application by that company to join another scheme will be put on hold by the receiving scheme until confirmation is provided by the first scheme that all obligations under that scheme have been fulfilled. If the company in question remains in default to the first scheme it will not be accepted into membership of the other scheme.

If a company makes an application to one scheme having previously been a member of another, the receiving scheme will seek information from the first scheme to establish whether there are any outstanding complaints or issues. If there are then:
(i) if the company has already defaulted on an award, as above the application will be put on hold until the award is paid;

(ii) if there is no default but there are ongoing complaints made before membership of the first scheme ended (and until such time as the time limit for making complaints to the first scheme has expired), membership of the new scheme will only be given temporarily;

(iii) the first scheme will notify the new one if the company then later fails to pay any award and the new scheme will then terminate membership; and

(iv) when a company has changed redress schemes in the normal course of business (i.e. there is no award pending) and a complaint is raised where issues occurred during membership of the previous redress scheme, the redress scheme in force at the time the complaint is made to the company will accept responsibility for that complaint.

(v) when a company has refused to admit a firm to Membership, for example because they have been identified as having characteristics of a phoenix company.

7. **Expulsion from Scheme Membership**

(i) Expulsion of agents or refusal to admit to Membership is appropriate if:
   - the agent has been banned from or,
   - the agent has refused to pay an award (issued by either of the schemes), and any appeal against that award has been dealt with.

(ii) Redress schemes may invite agents who dispute awards to pay ‘without prejudice’. If an agent has been expelled or refused membership, redress schemes should provide NTSEAT with full details of the agent involved, including which discipline(s) the agent is involved in. It is then for the regulator to enforce any failure to belong to a redress scheme. Redress schemes will refer all such cases (lettings and sales) to NTSEAT who will:
   - deal with sales agents in conjunction with local Trading Standards and, where necessary, take action themselves
   - refer lettings and management cases to the appropriate local Trading Standards or LA Housing team for action as appropriate (no enforcement action possible by NTSEAT, as out of scope).

(iii) Agents who make false declarations on their applications for membership should be referred to NTSEAT. Redress schemes cannot refuse membership in such circumstances, but may inform the agent that they will be referred to the regulator.

(iv) Where a company has been expelled as a result of a sales breach and also operates a letting agency (and vice versa) the company will be expelled from (i.e. not able to retain registration) the Scheme in its entirety, i.e. for both disciplines. The scheme responsible for expulsion will provide consumer
protection by (i) publicising the expulsion via their website/appropriate media outlets, (ii) by informing appropriate property portals (e.g. ZOOPLA/Rightmove), (iii) the Tenancy Deposit Scheme and (iv) NTSEAT and Trading Standards.

(v) The terms of membership of each scheme should provide explicit reference to and clarity on the unacceptability of operating a “phoenix” company. That is to say that expelled companies\(^1\) will not be re-admitted to the scheme on the basis of the same Directors\(^2\) forming a new company. This information is to be shared between both schemes to enable other schemes to refuse membership. The only exception to these circumstances is if the new company has fulfilled all of the obligations placed upon the expelled company by the relevant scheme.

8. Review

The two schemes will regularly:

- review this MOU; and
- discuss approaches to case handling and resolution.

Nothing in this MOU precludes the two schemes from meeting on an ad hoc basis or from discussing cases (subject to statutory restrictions including that of data protection).

9. Addendum to the MOU: Withdrawal of Ombudsman Services:Property

OS:P will continue to accept complaints from member firms whilst their membership with OS:P is current, up to and including 6 August 2018. Any complaints received after a member firm transfers to one of the other schemes (even if this complaint relates to an issue which arose during the firm’s membership of OS:P) will be dealt with by whichever scheme the agent is registered with at the date of receipt of the complaint. Once a firm has transferred from OS:P to either TPO or PRS they will be subject to the agreed MOU if they subsequently transfer between PRS and TPO after that time.

PRS and TPO will not accept any member transferring, where the OS:P member has an outstanding award or non-payment of case fee/subscription or was/is under investigation or suspension by OS:P until the award or non-payment is settled or their compliance process has been exhausted. On the settlement of the award, or payment of case fee/subscription, or a resultant appeal process overturns the prohibition under former versions of this MOU to which OS:P was party, either PRS or TPO can accept membership in line with their terms of reference.

To avoid gaps in Consumer Redress being available, OS:P can advise an Agent to pay “without prejudice” and join PRS or TPO. In such cases OS:P and the receiving

\(^{1}\) The term ‘company’ has been used to cover all forms of business legal entities including, but not limited to sole traders, partnerships and companies.

\(^{2}\) The term ‘director’ has been used to cover those individuals with responsibility for ownership and control of the business. Consideration will be made on a case by case basis.
scheme will provide NTSEAT with full details of the Agent involved as set out in 7(ii) above.

Signed for the Property Ombudsman

[Signature]

Date: 18 June 2018

Signed for Property Redress Scheme

[Signature]

Date: 18 June 2018
Terms of Reference for The Property Ombudsman Scheme

Effective from 1 August 2018
INTRODUCTION

1. The Property Ombudsman (TPO) scheme is designed to reach a resolution of unresolved disputes in full and final settlement. It provides consumers (who may be actual or potential buyers, sellers, landlords, leaseholders, lessees and tenants of property or have been otherwise involved by the actions of an agent) with free and independent redress of complaints relating to acts or omissions of Member or Registered Agents in connection with the sale and/or purchase and/or letting and/or management of property in the United Kingdom, Channel Islands and the Isle of Man. The scheme will also provide that redress to small businesses and charities as defined in Part 6.

2. These Terms of Reference can also be read as applying to consumer related disputes for any specific aspect of the Ombudsman’s jurisdiction as agreed from time to time.

3. The TPO scheme is set up as a limited company, The Property Ombudsman Limited, and has two parts to its structure:
   a. TPO Board
   b. The Office of the Ombudsman

4. Complaints start and finish with the Ombudsman. In reaching Decisions, the Ombudsman is impartial and independent of the TPO Board and all outside influences.

5. These Terms of Reference have been principally framed to guide the Ombudsman in dealing with complaints and coming to independent Decisions. They allow the Ombudsman to use their discretion within the general guidelines given.

PART 1 – ACCOUNTABILITY

6. The Ombudsman is accountable to the TPO Board. This ensures the Ombudsman’s independence and impartiality.

7. It is from the Board that they receive, or ask for, any general guidance.

8. Their relationship with the Board, and the role of the Board, is explained further at Part 5.

PART 2 - PRINCIPAL DUTIES AND POWERS

Duties

9. The Ombudsman’s principal duties are:
   a. to receive unresolved complaints by, or on behalf of, any small business, charity, trust or consumer (who may be an actual or potential buyer, seller, landlord, leaseholder, lessee or tenant of property or who has otherwise become involved) in relation to the carrying out of relevant estate and/or letting agency and/or property management work by any Member or Registered Agent, and to investigate such complaints and issue a Decision within the powers of the Ombudsman in accordance with Part 3;
   b. to actively assist in and contribute to raising standards by highlighting best practice and promoting it, and by identifying bad practice and helping to eliminate it as in Part 4.

Powers

10. The Ombudsman’s principal powers are:
   a. to direct that a Member or Registered Agent takes steps to improve practice and/or to desist from a continuance of existing practice where appropriate, including the issuing of a formal apology to the Complainant,
   b. to direct that a Member or Registered Agent pays the Complainant a financial Award, in full and final settlement of a complaint, not exceeding £25,000 per complaint by way of compensation for actual proven financial loss and/or aggravation, distress and/or inconvenience caused by the act(s) or omission(s) which was/were the subject matter of the complaint.

PART 3 – DEALING WITH COMPLAINTS

SCOPE OF INVESTIGATIONS

Grounds of complaint

11. The grounds of any complaint must be that in relation to the Complainant, the act or omission by the Member or Registered Agent complained of constitutes:
   a. a breach of the Member or Registered Agent’s obligations under the law;
   b. a breach of the Member or Registered Agent’s obligations under any relevant Code of Practice or any internal rules, procedures or statements of practice of the Member;
   c. unfair treatment;
   d. maladministration;

in a way that results in the Complainant suffering actual proven financial loss and/or aggravation, distress and/or inconvenience caused by the act(s) or omission(s) which was/were the subject matter of the complaint.

General conditions for acceptance of a complaint

12. The Ombudsman shall only consider, or continue to consider, a complaint if they are satisfied that:
   a. the complaint is made against a firm registered with TPO for the provision of redress to a Complainant for the relevant period;
   b. the complaint is made to them by or on behalf of the living persons or the small commercial enterprise or charity collectively who/which are or may be entitled to make a complaint;
   c. the Internal Complaints Procedure of the Member or Registered Agent has been exhausted, but the Complainant remains dissatisfied with any observations made, or conditions of full and final settlement offered by such Member or Registered Agent; or more than eight weeks have elapsed since the Complainant first made the complaint to the named Member or Registered Agent in writing. If the Member or Registered Agent ignores the complaint made or persistently fails to address the complaint, the Complainant may ask the Ombudsman to intervene even if eight weeks have not elapsed;
   d. the complaint is made to the Ombudsman not later than twelve months after the date of the Member or Registered Agent’s final viewpoint letter;
General exclusions

13. The Ombudsman shall not investigate a complaint (or any part of a complaint), or shall discontinue the investigation of a complaint (or any part), if:

a. it appears the Complainant is seeking a legal decision or sanction that can only be obtained in the Courts and/or an adjudication of potentially criminal activity or claims of negligence;

b. at any time that the Ombudsman finds out the complaint is already being or has been considered by a Court, or under another independent complaints, conciliation or adjudication of complaints where such other scheme appears to them to be more appropriate for the investigation of any complaint or part thereof. They shall not advise individuals on the selection of an agent or on the services that they offer, but they can advise the Complainant as to which Member or Registered Agents are subject to the Ombudsman’s jurisdiction and their registration status.

c. in the Ombudsman’s opinion the complaint does not have reasonable chance of success or they consider the Complainant is acting unreasonably, is continuously missing deadlines, is abusive, has clearly fabricated evidence or the Ombudsman considers the complaint to be frivolous or vexatious.

d. the act or omission giving rise to the complaint first occurred or could reasonably have come to the notice of the Complainant not more than twelve months before the Complainant first made the complaint in writing to the Member or Registered Agent;

14. Reference. In determining this, they shall take into account the guidelines in Paragraphs 11-13 above and consider any Representations from the Complainant and the Member or Registered Agent.

e. the act or omission of a Member or Registered Agent giving rise to the complaint first occurred after the date on which such firm became subject to the Ombudsman’s jurisdiction;

f. the subject matter of the complaint was not contained in a complaint form, made by or on behalf of, the same Complainant previously considered by the Ombudsman. However, the Ombudsman may reconsider complaints previously considered if relevant new evidence is available and no Award has been accepted and paid in full and final settlement;

g. the Ombudsman may, in the instances set out in Paragraph 13 below, not investigate a complaint or may discontinue an investigation. Notwithstanding those instances, they may still consider any complaint put to them provided that:

• there is no other relevant independent body for the conciliation, arbitration or adjudication of complaints in relation to the matter; and
• the Ombudsman feels that it is in their competence to do so; and
• both the Complainant and the Member or Registered Agent so agree;

h. where the amount claimed by the Complainant exceeds the monetary limit defined in 10b above the Ombudsman will advise the Complainant of that limit to their jurisdiction and provide the option of either discontinuing the investigation or proceeding by agreement to restrict the claim to the award limit.

Consideration of a Complaint

16. The Ombudsman must advise the parties within three weeks of the date the complete complaints file was prepared if they are intending to decline to take the matter forward. In such cases they must explain their reasons in writing.

17. Subject to the other provisions of these Terms of Reference, the Ombudsman shall, at their own discretion, decide the procedure and timescales to be adopted in considering complaints, provided that no lawful rights are removed from the Complainant, Member or Registered Agent. Such consideration may include conciliation, mediation or a case review. This discretion includes the delegation of making decisions on a complaint as approved by the Board in the TPO Scheme of Delegation.

18. In their consideration, the Ombudsman shall act impartially and fairly in all circumstances and must give reasons for the Decision in writing.

Confidentiality

19. Following the receipt of any complaint, the Ombudsman shall promptly:

a. require the Complainant to give written consent to give up their right to any duty of confidence owed to the Complainant by the Member or Registered Agent in terms which permit the disclosure by the Member or Registered Agent to the Ombudsman of information and documents requested by the Ombudsman;

b. send such written notice of consent to the Member or Registered Agent.

20. The Ombudsman may use any information freely provided to them by a complainant or a Member or Registered Agent in their consideration of a complaint provided it is for the express purpose of dealing with that complaint.

21. The Ombudsman may refuse to disclose information to either the Complainant or the Member or Registered Agent if:

a. in their reasonable opinion, it is not relevant to the consideration of the complaint;

b. in their reasonable opinion and in all the circumstances of the complaint, it is inappropriate, or unlawful;

c. it concerns issues of national security or the personal security of the Complainant, or Member or Registered Agent or third party;

d. it is protected by legal or professional privilege (and such privilege has not been waived);

provided that the Ombudsman shall always consider any specific requests for disclosure received from either party.

22. The Ombudsman will act in accordance with Data Protection legislation and shall take all reasonable steps to ensure that they and all TPO Office staff keep confidential any information provided as part of the investigation of a complaint, whether or not it is disclosed to the other party.
Requests for Information

23. For the purpose of the investigation into a complaint, the Ombudsman may require the Complainant or Member or Registered Agent to provide to them:
   a. such information and/or documents which are within their knowledge or reasonably ascertainable by them;
   b. and such information and/or documents in their possession or under their possession or control as is or are relevant to the complaint.

24. The Ombudsman will be entitled to proceed with their consideration of the complaint and to draw their own conclusions if, in their opinion, such requested information is not provided within a reasonable timescale previously notified to the relevant party.

25. Neither party shall be required to disclose documents to the Ombudsman which they are satisfied are protected by legal or professional privilege (where such privilege has not been waived by the Complainant or the Member or Registered Agent, as appropriate).

26. The Ombudsman may also request information from third parties if they believe it may be relevant to the investigation.

27. The Ombudsman shall not be bound by any legal rule of evidence. They are not permitted to take evidence on oath or cross-examine witnesses. They shall reach their Decision based on the evidence as they see it; the guidelines given in Paragraph 28 below; and on what appears to them to be fair and reasonable under the circumstances.

Guidelines

28. In making any Decisions under these Terms of Reference and in determining what is fair and reasonable, the Ombudsman shall have regard to:
   a. the law;
   b. any relevant Code of Practice and any internal rules or procedures or rules, procedures or statements of practice issued by a trade association of the named Member or Registered Agent;
   c. the provisions of any contract binding the Member or Registered Agent and the Complainant;
   d. any other matter the Ombudsman considers relevant to the act or omission by the Member or Registered Agent and which is the subject matter of the complaint.

Changes to General Procedure

29. The Ombudsman shall operate in accordance with these Terms of Reference and shall consult and obtain the approval of the Council in respect of any proposed changes to the Terms of Reference for making a complaint to them.

DECISIONS AND SETTLEMENTS

Proposed Decision

30. Having come to a proposed decision on the complaint received, the Ombudsman will send a case review containing the proposed decision to both parties. Each party will have 21 days in which to accept or represent against the proposed decision, following which either:
   (i) the proposed decision will be confirmed as the Final Decision; or
   (ii) in the event that a representation has been received to show that there has been a significant error in fact or that significant new evidence has been provided (which was not previously available) which is likely to result in a change to the proposed decision, it will be necessary to allow the other party the opportunity to comment on the representation (within 14 days) and such comments will be taken into account before issuing a Final Decision to both parties at the same time.

Representations

31. A Representation will normally only be considered:
   a. if it can be shown that there has been a significant error in fact that would have had a material effect on the Decision;
   b. if significant new evidence (not previously available) is produced that will have a material effect on the Decision.

32. The Ombudsman can decline to consider a Representation if they consider it falls within any of the categories defined in Paragraphs 13a – 13c above or is, after due consideration, a reiteration of the original complaint.

Oral Hearings

33. Any request for an oral hearing must be considered by the Ombudsman 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.

Final Decision

34. Having considered any Representations, the Ombudsman shall come to a Final Decision, in which (in line with their powers at Paragraph 10) they may direct:
   a. that the Member or Registered Agent takes, or desists from taking, such steps as they may specify including the issuing of a formal apology to the Complainant;
   b. and/or that the named Member or Registered Agent pays the Complainant an Award (not exceeding £25,000) by way of compensation for actual proven financial loss and/or aggravation, distress and/or inconvenience caused by the act or omission of the subject matter of the complaint.

35. A Final Decision shall be in writing and shall:
   a. give a summary of the reasoning for making the Decision;
   b. state the amount, if any, of the Award of compensation to be paid and the conditions for acceptance;
   c. specify any other direction that the Ombudsman has made;
   d. not be subject to further Representation;
   e. not be subject to appeal (as in Paragraph 4).

36. Although such decisions are not subject to Appeal or further Representation this does not preclude the Complainant or Member or Registered Agent making a complaint about the Ombudsman’s service processes and procedures, which will then be dealt with in accordance with the TPO complaints handling procedure.
Awards
37. The Awards made by the Ombudsman are compensatory and not punitive. They are to compensate a Complainant for any actual, proven financial losses and/or for undue and avoidable aggravation, distress and/or inconvenience that have been occasioned by the act or omission of the Member or Registered Agent.
38. Any Award shall be for the payment by the named Member or Registered Agent to the Complainant of a sum not exceeding £25,000 per complaint.
39. The Decision shall state that if, within 21 days (14 days if there has been a Representation) after its issue, the Complainant agrees to accept it in writing in full and final settlement of the subject matter of the complaint, it shall be binding on both the Complainant and the named Member or Registered Agent.
40. If the Complainant fails to accept the Decision within 21 days (14 days if there has been a Representation) of receipt thereof, the Decision and any award therein shall lapse.
41. If the Complainant accepts the Decision in writing in full and final settlement of the subject matter of the complaint within 21 days (14 days if there has been a Representation), the Ombudsman shall then notify the Member or Registered Agent of that fact within 5 days of the Ombudsman’s receipt of the Complainant’s acceptance. The Member or Registered Agent shall then pay the amount of the Award to the Complainant:
   a. within 28 days of the Ombudsman’s notification; or
   b. if the Award states that any monies are due to be paid by the Complainant to the Member or Registered Agent, within 14 days of the Complainant making such payment.

Full and Final Settlement
42. The Ombudsman may at its discretion employ a conciliation, mediation or other informal resolution process to determine matters. Any settlement agreed by both parties at the end of that process will have the status of an Award made in a Final Decision. The Member or Registered Agent is therefore then under an obligation to conform to any direction and/or award that the Ombudsman may make about implementing that settlement in accordance with Paragraphs 10a and 10b and within the timescales set out in Paragraph 41.
43. Any Award made and accepted is in full and final settlement of all the complaints made against the Member or Registered Agent upon which the Ombudsman has made a Final Decision.
44. The Ombudsman must inform the Complainant that acceptance of an Award and/or a Decision might compromise their ability to pursue that complaint through the Courts. By acceptance of the Ombudsman’s Award, the Complainant is agreeing to the full and final settlement of that dispute. However, if they reject the Ombudsman’s Final Decision, a Complainant can pursue their case through the Courts, with any complaint on which the Ombudsman has been unable or has declined to make a Final Decision.

Closure and Discontinuance
45. On any settlement, withdrawal or lapse of a complaint, the Ombudsman shall discontinue the consideration of that complaint.
46. Once the Ombudsman has made a Final Decision and an Award has been accepted and paid in full and final settlement, the case is closed. The case cannot be reopened by either party, even with the production of new evidence.

47. The Ombudsman shall not be bound or in any way limited by any previous Decision made by them or by any predecessor.

PART 4 – IMPROVEMENTS IN STANDARDS
48. The Ombudsman can put before the Board proposals for the improvement of practice within the industry.
49. Subject to guidance (as updated from time to time) from the Board as to the categories of cases that do not require routine reporting, the Ombudsman is to report to the Board when there appears to them to have been any single flagrant breach and/or any persistent breaches of the Code of Practice (where that applies) by any Member. The Board’s powers to deal with such disciplinary matters are set out in the Articles of Association of the Company and the Terms of Reference of the Board’s Compliance Committee.
50. During the consideration of any complaint, the Ombudsman has a duty to consider whether the complaint is one which raises fitness to practice issues and accordingly whether it should be referred directly to the NTSEAT because it appears to trigger action under Section 3 of the Estate Agents Act 1979.

PART 5 - OTHER POWERS AND DUTIES

Promotion of the Scheme
51. The Ombudsman has an obligation to publicise the scheme and to explain to the media, general public, buyers, sellers, landlords, leaseholders, lessees and tenants of property, estate agents, residential leasehold managing agents and letting agents, and other agents within their jurisdiction of the scheme’s processes and procedures.

TPO Office
52. The Ombudsman shall be responsible for the day-to-day administration and conduct of the business of the TPO Office and its staff. They shall have power to incur expenditure on behalf of the Company in accordance with the current financial budget approved by the Board.
53. Subject to the general oversight of the Chair of the Board, the Ombudsman shall have power on behalf of the Company to appoint and dismiss employees, consultants, independent contractors and agents, and to determine their terms of employment or engagement.
54. The Ombudsman shall not exercise any power which the Articles of Association of the Company expressly assigned to the Board or any other person.

Board Meetings
55. The Ombudsman shall endeavour to attend each meeting of the Board and put before it such business that they deem fitting, and give it any information and assistance (including any general information about any reference) which it reasonably requests. Nothing in this clause excludes the Board from meeting in the absence of the Ombudsman.
56. Except in pursuance of Paragraph 49 and 50, or as required by any competent authority or appropriately mandated body, or as properly and reasonably required in connection with any legal proceedings instituted by or against the Company or any of its officers, the Ombudsman shall not disclose to any person (including a Board Member) any information concerning a complaint considered by them from which it would or might be possible to identify the
Complainant or any Member or Registered Agent named in the complaint, or any other information of a confidential nature which has been obtained in the course of their duties.

57. Paragraph 56 shall not prohibit the disclosure of any information to the Complainant and any Member or Registered Agent or to the Chair of the Board or any Member of the Board authorised by the Board, or to any employee, consultant, independent contractor or agent of or with the Company to the extent that such information is reasonably required by that person for the purpose of performing their duties to the Company.

Role of the Board

58. The TPO Board has specific responsibilities under the Companies Act and the Articles of Association. It has no role in the discharge of the Ombudsman’s duties or decisions. The Board is therefore responsible for the functioning of the Company, raising sufficient funds and the administration of and promotion of TPO membership. Any termination of Membership shall be executed by the Board, either where recommended by the Compliance Committee or where a Member or Registered Agent fails to meet their contractual requirements.

Annual Report

59. The Ombudsman will produce an Annual Report containing, in relation to the preceding financial year of the Company, a general review of the Scheme’s activities during that year.

60. In accordance with the Ombudsman Scheme’s various independent external approvals, the Ombudsman will also produce, and where appropriate publish, specific information required under the criteria for the approvals.

PART 6 - INTERPRETATION

61. In these Terms of Reference, the following expressions have the following meanings:

a. ‘Award’ means the compensatory element in money, or money’s worth, of a Final Decision.

b. ‘Board Member’ means a member of the Board of Directors of the Company appointed in accordance with the Company’s Articles of Association.

c. The ‘Company’ means The Property Ombudsman Limited.

d. ‘Complainant’ means a seller, including any small business, charity or trust [see 9. a.], or buyer or potential seller or potential buyer or landlord or leaseholder or lessee or tenant of property by whom or on whose behalf a complaint is made to the Ombudsman, and any other person who has become involved as a result of an agent’s actions. It includes a personal representative or any person so entitled to stand in their place after their death.

e. ‘Day’ means a calendar day, not a working day.

f. ‘Decision’ is a direction and/or decision and/or conciliation, mediation or other informal resolution process (see Paragraph 42) made by the Ombudsman within their powers under these Terms of Reference.

g. ‘Estate Agency Work’ means any things done by any person in the course of a business (including a business in which they are employed) pursuant to instructions received from an individual (the ‘client’) who wishes to sell or purchase any property in the United Kingdom, Channel Islands or Isle of Man:

• for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to purchase or, as the case may be, sell such property; and after such an introduction has been effected in the course of that business, for the purpose of securing the sale or, as the case may be, the purchase of that property;

• provided that nothing shall constitute estate agency work unless it relates exclusively to the sale or purchase of property.

h. ‘Final Decision’ is the Decision made by the Ombudsman following any Representations and in accordance with these Terms of Reference.

i. ‘Internal Complaints Procedure’ means a written procedure for the resolution of complaints by actual or potential buyers, sellers, landlords, leaseholders, lessees or tenants of property in relation to acts or omissions which could be the subject of an investigation by the Ombudsman, being a procedure under which the complaint, if not previously settled or withdrawn, is to be considered by the senior management of the relevant Member.

j. ‘Letting’ means the finding of a tenant for a third party landlord and/or the management of a property on behalf of that landlord.

k. ‘Member or Registered Agent’ means any firm who is directly a Member of TPO or who is subject to the Ombudsman’s jurisdiction and these Terms of Reference by virtue of a contractual agreement with a trade association of which the firm is a Member and has agreed to abide by their rules.

l. ‘Residential Leasehold Management’ means the management of residential leasehold blocks of flats, in accordance with the terms of the lease and statutory requirements and under the instruction of the freeholder or legal entity with the control of the property.

m. ‘Small business’ (to include Charities and Trusts) is defined as:

• a small business (or group of companies) with an annual turnover of less than £3 million;

• a charity with an annual income of less than £3 million;

• a Trust with a net asset value of less than £3 million.

n. ‘UK’ means England, Wales, Scotland and Northern Ireland.

62. In these Terms of Reference:

a. references to the provision of services include, where the context admits, references to their non-provision;

b. references to the singular number (including without limitation references to ‘individual’, ‘Complainant’ and ‘Registered Firm’) include, where the context admits, the plural and vice versa;

c. references to Paragraphs are to Paragraphs of these Terms of Reference.
The Property Redress Scheme is a government authorised Consumer Redress Scheme for Lettings, Property Management and Estate Agents and other Property Professionals
1. Introduction

The Property Redress Scheme ("PRS") is a government authorised consumer redress scheme that offers an escalated complaints process to consumers of Members of the PRS. The redress is offered in relation to complaints caused by the acts or omissions of the Member.

The PRS is a trading name of HF Resolution Ltd. The PRS has three distinct parts to its structure:

- Executive Board
- Office of Ombudsman and Head of Redress
- Advisory Panel

These Terms of Reference set out how the PRS works, the basis upon which Members join and the approach of the PRS to resolving complaints.

2. Purpose

The main purposes of the PRS are to:

a. allow Property Agents and Professionals to comply with their legal responsibility to join an approved consumer redress scheme and to add value to their business;

b. resolve or settle unresolved complaints made, relating to acts or omissions of a Member after the Complainant has already exhausted the Member's internal complaints procedure;

c. where appropriate, make an award as a result of any financial loss, or unnecessary aggravation, distress and/or inconvenience caused by the Member;

d. actively assist in and contribute to raising standards in the industry by highlighting and promoting best practice and by identifying bad practice and helping to eliminate it;

e. decide upon complaints on the basis of what the PRS believes is fair and reasonable in each case.

The PRS complaints service is an alternative and more informal method of resolution than using the courts. The PRS is not a regulator and does not have the authority to take regulatory or legal action against a Member.

3. Accountability

The Head of Redress is responsible for the actions and decision making of the PRS (from Case Assessors, Case Officers and Ombudsmen). The Head of Redress is accountable to the PRS Executive Board ("the Board") but is not a member of the Board. The Head of Redress is independent and impartial from the executive responsibilities of running the PRS.

The PRS also has an Advisory Council ("the Council"). The Council both advises and scrutinises the running of the PRS. The Council includes representatives from the property industry, including consumer representation and has an independent Chair. The Head of Redress will also sit on the Council.
4. The Head of Redress

The Head of Redress is responsible for the decision making of the PRS among other responsibilities including representing the PRS to the property industry.

When the PRS makes a decision on a complaint it has been done so under the jurisdiction of the Head of Redress.

The PRS will use the principles and practices in these Terms of Reference as the broad basis for assessing any offer of redress made to the Complainant by a Member.

In making a decision, the PRS will:

a. proceed fairly and in accordance with the principles of natural justice;

b. make reasoned decisions in accordance with what is fair and reasonable in all the circumstances having regard to principles of law, good industry practice, equitable conduct and good administration;

c. make a decision based on any relevant Code of Practice, terms and conditions agreed by the parties, the law (including consumer law) and also what is fair just and equitable in the circumstances of the specific case in question;

d. ensure that the burden of proof for any decision made will be on the ‘balance of probabilities’;

e. ensure that no one decision will set a precedent for another decision although the PRS will follow a consistent approach to issues;

f. request the parties attend mediation if the PRS believes that this is the best way to resolve the complaint.

Section B: Membership

5. Membership Requirements

Members of the PRS are required to:

a. agree to abide by these Terms of Reference including the Membership Obligations set out in the relevant Appendix;

b. complete and submit/sign an Application of Membership;

c. disclose all information requested for membership. In the event of non-disclosure or misrepresentation the PRS reserves the right to terminate the membership;

d. pay all joining, renewal, complaint and penalty fees in the timescale as directed by the PRS;

e. provide a copy of their internal complaints procedure to all consumers (the PRS provides a model complaints procedure Members should adopt if they do not have one);

f. provide information about the PRS to all consumers when signing any agreement and at the point any formal complaint is received;

g. display a PRS window sticker in all offices;

h. display the PRS logo and link on their website;

i. comply and keep up to date with all relevant legislation;

j. keep all contact details up to date and inform the PRS promptly of any changes;

k. respond to all PRS communication as required.
6. Membership Options

The PRS Membership options:

**Option 1 - Enhanced Model** - Annual fee for head office and additional annual fee per branch with no individual complaint fees (subject to the PRS fair usage policy) and access to the legal advice helpline.

**Option 2 - Entry Model** - Low annual subscription fee for head office and additional annual fee per branch plus reasonable complaint fees.

**Fair usage policy**

The PRS may move the Member from the Enhanced Model to the Entry Model if in the reasonable opinion of the PRS the number or type of complaints made against the Member is excessive, in relation to their size and work they carry out. This will mean that the Member is required to pay the standard rate for any future complaints at the Entry Model fee for the rest of that subscription period. Renewal terms may not then be offered to the Member on the Enhanced Model.

The PRS will only enforce the fair usage policy after:

a. attempting to discuss the matter with the Member; and

b. sending a formal written notification to the Member, outlining the reasons why the PRS believe that the number of complaints made against the Member is excessive and after unsatisfactory action has been taken by the Member to rectify the issues.

7. Membership Subscription

a. Whichever Membership subscription the Member chooses will cover all the work the Member undertakes e.g. an Agent who undertakes Estate and Lettings Agency work can join for the same fee, there are no separate fees for the different types of work.

b. The Member must, however, inform the PRS of the type of work undertaken at the Head Office and any branches and satisfy us that they comply with any additional legal requirements associated with this type of work.

c. The PRS operates an auto renewal process which includes taking payment from the Member’s most recent debit or credit card. This process can be de-activated by the member.

d. For Members on the Entry Model, any Complaint Fees due may be taken automatically from the Member’s registered debit or credit card.

e. Other branches:

i. The Member must register and pay for all actively trading branches (other offices) associated with the company with the PRS.

ii. The Head Office and all branches must be on the same Membership Model.

iii. If the Member informs the PRS that they have opened a new branch during their subscription period then the PRS will charge a pro rata fee to cover the rest of the subscription period.

iv. If the PRS discovers that the Member has a branch that is not registered, the PRS will investigate why the branch was not registered. Generally the PRS will invoice for the discovered branch from the beginning of the Member’s subscription period. Failure by the Member to pay the invoice may result in cancellation of the Member’s PRS Membership.

v. If the applicant is running an entirely web based business, they must register a “head office” being a servable UK address. Their level of subscription and whether they are required to register any branches will be based on the business model that they operate and the PRS reserves the right to make a final decision on an individual basis.
8. Membership Cancellation/Expiry

If a Member opts to cancel their Membership they will need to put the request in writing to info@theprs.co.uk together with the cancellation reasons.

No refund will be due to the Member if they cancel their Membership within the subscription period or if the PRS is required to cancel the Member’s Membership.

On Membership cancellation or expiry, the PRS may be required to inform trading standards along with the other redress schemes in line with our responsibilities and Memorandum of Understanding.

9. Disciplinary

The PRS Compliance Officer will be required to investigate a Member’s conduct in the following circumstances:

a. The Member does not pay any PRS fees when due;
b. The Member does not comply with a PRS decision as directed;
c. The Member breaches any of the PRS Terms of Reference;
d. It is alleged the Member acts or has acted in a way to bring the PRS into disrepute;
e. Trading Standards or another government body or organisation asks the PRS to investigate the Member’s conduct;
f. Any other reasonable reason.

After conducting the investigation the Compliance Officer will then make a recommendation to the PRS Head of Redress and Managing Director as to whether the Member have their Membership cancelled.

If the Head of Redress and Managing Director agree to the Member having their Membership cancelled then the Member will be informed and provided with the reasons for the cancellation.

If the PRS expels a Member then the PRS will be required to inform the other government authorised consumer redress schemes, Trading Standards, local authority, any trade association that the Member has joined. The PRS also reserves the right to name that Member on a public list of expelled Members and issue a press release relating to the expulsion.

If the Membership is cancelled due to the Member not complying with a PRS decision the Member will be required to comply with the decision before being able to join another consumer redress scheme or rejoin the PRS.

To rejoin the PRS the person or business will also be required to pay a further Membership fee (which will be double the standard amount for its class).

Section C: Complaints against Members

10. Grounds for Complaint

The grounds of any complaint must be in relation to the act or omission of the Member and fall under the following criteria:

a. A breach of the Member’s obligations under the law;
b. Where legal rights have been impinged or breached;
c. Where a Member has not acted in accordance with a Code of Practice it has signed up to, or any internal rules, procedures or statements of practice;
d. Unfair treatment by the Member; including, but not limited to:
   i. Poor or incompetent service;
   ii. Rudeness or discourtesy;
   iii. Not explaining matters;
   iv. Not administering a transaction as efficiently as would be expected;
   v. Avoidable delays.
11. General Conditions for Acceptance of Complaint

The PRS shall only consider, or continue to consider a complaint if it is satisfied that:

a. the complaint is made against a Member of the PRS;

b. the Complainant sent a formal written complaint to the Member within 12 months of the incident they are complaining about occurring and tried to resolve the matter directly with them;

c. the Complainant has received a final response from the Member but remains dissatisfied with the outcome or the response including any full and final settlement offered or the Complainant has waited 8 (eight) weeks for a response to their written complaint, but the Member has not responded;

d. the Complainant has submitted a complaint to the PRS either online or using the Complaint Form;

e. the complaint is raised with the PRS within 12 months from the date of the last correspondence from the Member or from when the Member should have responded to the formal letter of complaint.

12. Non-Acceptance of a Complaint

The PRS reserves the right not to investigate a complaint (or any part of a complaint), or shall discontinue the investigation of a complaint (or any part), if:

a. the complaint occurred prior to the agent/company joining the PRS (unless they were a member of another redress scheme during that period);

b. the amount claimed is in excess of £25,000;

c. in the PRS’s opinion the complaint is considered to be unsupported, frivolous or vexatious;

d. the complaint relates to alleged criminal activity;

e. the resolution to the complaint would be covered by appropriate insurance;

f. the PRS deems that it is more appropriate for the complaint to be dealt with by a Court, Tribunal or another independent complaints, conciliation or arbitration procedure such as a tenancy deposit protection scheme;

g. legal proceedings have been issued or the complaint is already being considered or has been considered by a Court, Tribunal or another independent complaints, conciliation or arbitration procedure;

h. in the PRS’s opinion the complaint does not have a reasonable prospect of success. The PRS will provide the reasons if relying on this clause;

i. the Complainant has not fulfilled their obligations under a contract or agreement such as paying rent or fees;

j. the Complainant fails to respond to any reasonable request from the PRS within the timescale provided;

k. the PRS deems that any offer provided by the Member is a suitable resolution to the matter and would not be bettered by the PRS. In this circumstance the PRS will inform the Complainant that the offer should be accepted or rejected but by rejecting the offer the matter will be closed by the PRS.
13. The Procedure for Resolution of Complaints

On receipt of a complaint the PRS will:

a. check the complaint complies with paragraphs 10 and 11;

b. if necessary request further information and evidence from the Complainant which is required in order to proceed. The Complainant has 20 working days to provide this information to the PRS, failure to provide this information may result in the complaint being closed;

c. notify the Member of the complaint and give the Member 10 working days to resolve the complaint directly with the Complainant.

If a mutual agreement is made within the 10 working days the PRS will request confirmation that the Complainant is satisfied with the resolution and the case will be closed.

If the matter is not resolved within the first 10 working days then the PRS will:

a. provide the Member with a further 10 working days to submit their rebuttal evidence to the PRS;

b. upon receipt of the rebuttal, have 15 working days to review the evidence submitted by both parties and to either facilitate an early resolution or determine whether the complaint has any grounds to continue with the PRS;

It is at the PRS’s discretion to provide an extension of time if in the reasonable opinion of the PRS this will assist the parties to reach a resolution.

If both parties have agreed to an early resolution they do so in full and final settlement of the complaint and this becomes the PRS’s final decision.

If the parties have not reached an early resolution with the assistance of the PRS, the complaint will be escalated to either the Head of Redress and Ombudsman office or to formal mediation. If the Member has joined under the Entry Model subscription then they will be required to pay the advertised complaint fee to the PRS. The PRS will invoice the Member for payment which must be paid within 14 days from the date of the invoice.

14. The Proposed Decision

The PRS will:

a. have 20 working days to make a Proposed Decision based on the evidence submitted by the parties;

b. The PRS will, if necessary, request further information and evidence from the parties in order to reach a fair decision. If the PRS receives no response to the further information request then the PRS will proceed based on the evidence submitted;

c. Send the Proposed Decision once completed to the Complainant and the Member who will both have 10 working days to accept or request a review of the Proposed Decision;

d. If both parties accept the Proposed Decision, this will become the PRS’s final decision and will be binding on the Member;

e. If either party considers there to be an error in fact or law then they may request a review of the Proposed Decision and the PRS will proceed in accordance with paragraph 15;

f. If the Complainant has accepted the Proposed Decision and the Member fails to respond by either accepting or requesting a review then the Proposed Decision will become the PRS’s final decision and will be binding on the Member;

g. If the Complainant fails to respond to the PRS’s Proposed Decision the PRS will consider that they do not agree with the Proposed Decision but do not have grounds for an appeal and the case will be closed;
h. If the Complainant does not agree with the Proposed Decision they still have the option of taking the Member to Court to recover any losses they believe they have suffered;

i. The PRS may accept a late notification from either party if they provide sufficient reason for not responding to us within the notified time scale;

j. If the Complainant informs the PRS they do not agree with the decision then the PRS will inform the Member.

15. Review Acceptance Criteria and Process

Either the Member or the Complainant may request a review by completing the review request form within 10 working days of notification of the Proposed Decision. A review can only be raised on the grounds that there has been an error in fact or in law (or both) or there has been an administrative error by the PRS. The person raising the review request will not be able to submit further evidence at this point.

Upon receipt of a review request the following will occur:

a. The PRS will request a response from the other party to the complaint regarding the review request;

b. The response must be received by the PRS within 5 working days of this being requested;

c. From the response deadline, the PRS will have 20 working days to review the Proposed Decision based on the review request and any further representations and provide a final decision.

After carrying out the review the PRS will substitute the proposed decision with a final decision which will set out:

a. A summary of the review request and any response;

b. The reasons, if any, for amending the Proposed Decision;

c. Any redress required from the Member, be it financial or otherwise.

On delivery of the final decision, the Complainant will have 15 working days to inform the PRS whether they accept the findings.

If the PRS does not hear from the Complainant after 15 working days the final decision will be deemed as not accepted by the Complainant and the case will be closed.

If the Complainant does not agree with the decision the case will be closed. The Complainant will have the option of taking the Member to court to recover any losses they believe they have suffered.

The PRS may accept a late notification from either party if they provide sufficient reason for not responding to the PRS within the notified time scale.

The Member is generally required to comply with a final decision within 28 days. If the Member fails to comply within the specified timeframe in the decision then they will be subject to disciplinary action by the PRS in accordance with paragraph 9;

If the decision is accepted by the Complainant then it is binding on the Member.

This decision is final and no further requests for review will be considered.
16. Default Decision Process

In the event that the Member fails to respond or cooperate with the PRS within the specified timescales, the PRS will:

a. notify both parties that the PRS will proceed with resolving the complaint by referring the case to the Head of Redress for a Default Decision based on the evidence submitted. If the Member has joined under the Entry Model subscription then they will be required to pay the advertised complaint fee to the Scheme;

b. send the Default Decision to the Complainant who has 15 working days to accept the Default Decision;

c. notify the Member of the Default Decision and if accepted by the Complainant, the Member must comply with the Default Decision within 28 days.

If the Member fails to comply with the decision within the specified time period, the Complainant may pursue the matter further through the legal process and will be entitled to use this decision as evidence that due process has been undertaken.

In the event that the Member fails to comply with the decision they will be subject to disciplinary action by the PRS in accordance with paragraph 9.

17. Evidence Requirements

It is the responsibility of both the Complainant and the Member to provide all evidence which they intend to rely on. The PRS takes no responsibility for evidence that either party may have, but does not submit as part of the resolution of a complaint.

Any decision made will be based on the evidence provided. The PRS may be required to clarify evidence but will only request further evidence if it is felt that it would be contrary to natural justice not to do so.

If the PRS makes a request to a party for information or evidence and they do not respond within the period set out then any evidence provided late may not be considered.

18. Awards

In settlement of the complaint, the PRS may make an award against the Member and to the Complainant consisting of one or more of the following:

a. an apology;

b. an explanation;

c. practical action to mitigate any detriment;

d. reimbursement of actual loss and/or costs incurred;

e. a payment in recognition of time and trouble taken to make the complaint;

f. a payment, where appropriate, for inconvenience and distress;

g. other appropriate action suggested by the Complainant or decided by the PRS.

Any compensation payment will be calculated based on demonstrable loss or costs and will take into account any degree to which the Complainant has contributed to the failure or loss suffered.

The maximum monetary compensation payment the PRS can award to a Complainant is £25,000.00.
19. Interest Payments

The inclusion of an interest calculation may be considered where, for example, a specific sum of money owed to the Complainant was not paid at the proper time.

The interest rate used by the PRS is the rate used by the County Court. Interest will start from the point where the Complainant spent the money or did not receive money due, and will be applied until the date on which payment is made.

Section D: Scheme Matters

20. Complaints Concerning the Scheme

If a Member or Complainant wishes to make a complaint against the service provided by the PRS then they must make it clear they are making a complaint and set out the reasons and the basis of the complaint.

Complaints cannot be made against a Final Decision of the PRS as the decision is final and binding on the parties if it is agreed by the Complainant.

The complaint must be emailed to info@theprs.co.uk or posted to Property Redress Scheme, Complaints Team, 1st Floor, Premiere House, Elstree Way, Borehamwood, WD6 1JH.

All complaints will be fully considered and an initial response will be sent within 5 workings days. If the PRS expects it to take longer to provide a full response then they will contact the Complainant and explain why.

If the PRS provide a final response to the complaint then the PRS reserves the right not to enter into any further correspondence on the matter.

21. Provision of Information by the PRS

Information will be provided to:

a. persons exercising functions under other approved redress schemes;

b. any other person exercising regulatory functions in relation to approved redress schemes.

The PRS has entered into a Memorandum of Understanding with the other government approved redress schemes to cover exchange of information and common approach to decision making.

The main information that will be required to be shared will be in relation to Members who are under investigation and/or have had their membership of any of the schemes cancelled. The aim is for the redress schemes to address complaints received in a consistent manner.

If a regulatory or enforcement body requests any information from the PRS then the PRS reserves the right to provide this information in a timely manner as requested.

22. Confidentiality

The PRS may use any information freely provided by a Complainant or a Member in its consideration of a complaint provided it is for the express purpose of dealing with that complaint.

The PRS may refuse to disclose information to either the Complainant or the Member if:

a. in its reasonable opinion it is not relevant to the consideration of the complaint;
b. in its reasonable opinion and in all the circumstances of the complaint, it is inappropriate, or unlawful;

b. it concerns issues of national security or the personal security of the Complainant, or Member or third party;

d. it is protected by legal or professional privilege (and such privilege has not been waived).

The PRS shall always consider any specific requests for disclosure received from a party.

The PRS will act in accordance with all data protection legislation and shall take all reasonable steps to ensure that all PRS staff keeps confidential any information provided as part of the investigation of a complaint, whether or not it is disclosed to the other party.

By raising a complaint, the Complainant agrees that certain personal information has been provided and they give authority for the Member to use their personal information in their response to the complaint.

23. Annual Report

The PRS Managing Director will be responsible for producing the PRS’s annual report. This report will set out the activities of the PRS, Member numbers and sectors, number of complaints received, number rejected, number referred back to the Member, number requiring mediation and the number requiring a decision. Figures will be released on the types of complaint and the results of the PRS’s decisions.

24. Best Practice

In order to ensure that best practice standards are achieved within the industry, the PRS will publicise:

a. its legal constitution, governance, and funding arrangements;

b. the types of complaints which may be referred;

c. the rules governing the referral of complaints;

d. the decision-making arrangements;

e. the rules serving as a basis for decisions;

f. the level and applicability of the awards;

g. the provision for securing expert advice to assist with investigation;

h. the jurisdiction, powers and method of appointment of any Ombudsman.

The PRS will also:

a. publicise decisions made by the PRS in the form of case studies from time to time;

b. provide guidance on the types of evidence that are considered by the PRS and how best to set out a complaint or response;

c. notify in writing or by telephone all parties of any action taken by the PRS in relation to a complaint;

d. provide help and guidance to Complainants and Members to understand any PRS process or to fill out any PRS form;

e. make the processes themselves clear, transparent and easy to access by all without the need for specialist representation. All parties to a complaint can use third party representation if they so wish providing the PRS are provided with a satisfactory authority for that person to act;

f. consider the needs of disadvantaged and vulnerable people and make the timescales flexible if a Complainant can show they have a valid reason to require more time;

g. include on its website a public search facility so consumers/Complainants can check whether the person or business is a member.

The following miscellaneous provisions apply:

a. these Terms of Reference may need to be updated from time to time. Notices of any significant changes will be posted on our website, in newsletters and by email where the Member has provided us with an email;

b. the Member agrees to abide by the latest version of the Terms of Reference notwithstanding any earlier version which were in force when joining the PRS;

c. the PRS may delay action if the PRS have any concerns about a Member’s compliance with the Terms of Reference, identity, fraud or money laundering;

d. the PRS cannot be held responsible for intervening events beyond our control which prevent, delay or impede the PRS's ability to operate the Scheme or these Terms of Reference;

e. the PRS will not be responsible for the Member missing an email from the PRS when the message was received into the Member’s spam email inbox. The Member is responsible for adding PRS email addresses to their ‘safe sender’ lists if necessary;

f. these Terms of Reference are governed by and shall be construed in accordance with relevant UK law;

g. the PRS’s previous decisions may not be relied upon as precedent or authority for deciding any following complaint. Each complaint is addressed on its own individual merits and supporting evidence submitted by both parties.
The Property Redress Scheme offers a consumer redress scheme authorised by the Department for Communities and Local Government (“DCLG”) to offer redress to customers of Lettings and Property Management Agents under the Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013 (“the Order”).

The following definitions apply to Agents who are required to join a consumer redress scheme under the Order:

“Lettings Agency Work” means things done by any person in the course of a business in response to instructions received from —

(a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”);

(b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it (“a prospective tenant”).

“Property Management Work” means things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where —

(a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C’s behalf, and

(b) the premises consist of or include a dwelling-house let under a relevant tenancy.

“Complainant” is defined as a consumer of services provided by Agents undertaking Lettings Agency Work or Property Management Work.

Agents who are covered by the above definitions and join the PRS must:

a. inform consumers of their membership with the PRS;

b. display a PRS window sticker in all offices and display the PRS logo and link on their website;

c. provide information about the PRS to all consumers when signing any agreement and provide information on how to raise a complaint with the PRS at the point any formal complaint is received;

d. provide a copy of their internal complaints procedure to all consumers or use the Model Complaints process available in the PRS Member’s area of the website;

e. take into consideration any special measures required to inform and explain their practices and procedures to vulnerable consumers;

f. comply, keep up to date with and act in accordance with all relevant legislation;

g. treat consumers equally regardless of sex, race, religion, disability and sexual orientation;

h. ensure all consumers are provided with clear written details of agreements with them;

APPENDIX 1
Specific Terms of Reference for Letting and Property Management Agents in England

The Property Redress Scheme offers a consumer redress scheme authorised by the Department for Communities and Local Government (“DCLG”) to offer redress to customers of Lettings and Property Management Agents under the Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013 (“the Order”).

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(b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it (“a prospective tenant”).

“Property Management Work” means things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where —

(a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C’s behalf, and

(b) the premises consist of or include a dwelling-house let under a relevant tenancy.

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b. display a PRS window sticker in all offices and display the PRS logo and link on their website;

c. provide information about the PRS to all consumers when signing any agreement and provide information on how to raise a complaint with the PRS at the point any formal complaint is received;

d. provide a copy of their internal complaints procedure to all consumers or use the Model Complaints process available in the PRS Member’s area of the website;

e. take into consideration any special measures required to inform and explain their practices and procedures to vulnerable consumers;

f. comply, keep up to date with and act in accordance with all relevant legislation;

g. treat consumers equally regardless of sex, race, religion, disability and sexual orientation;

h. ensure all consumers are provided with clear written details of agreements with them;
i. for those undertaking lettings work, comply with the Private Rented Sector Code of Practice and CMA Guidance for Lettings Professionals on Consumer Protection Law;

j. for those undertaking property management work comply with the RICS UK Residential Property Standard;

k. Under the Consumer Rights Act 2015 Agents MUST:

1. publicise whether or not they are a member of a client money protection scheme and display a notice stipulating which scheme they are a member of;

2. display their fees, charges and penalties which are payable to the Agent by a customer. The list must be displayed at any premises where the Agent comes face-to-face with an existing or potential customer.

The PRS recommends that Letting and Property Management Agents purchase appropriate Professional Indemnity Insurance and inform their insurance provider immediately if they are subject to a formal complaint.

Letting and Property Management Agents based in other areas of the UK can join the PRS and agree to abide by the PRS Terms of Reference in the same way as those in England who are legally required to join a consumer redress scheme.
The PRS offers a redress scheme authorised by the National Trading Standards Estate Agency Team at Powys County Council (“NTSEAT”) to offer redress to customers of Estate Agents throughout the United Kingdom under the Consumers, Estate Agents and Redress Act 2007 (“CEARA”).

Members who undertake Estate Agency work are required to purchase Professional Indemnity Insurance. Although the Property Redress Scheme will not request evidence of the insurance when the Agent joins, the PRS can request evidence of the insurance at any point during the membership. If the Agent is unable to supply evidence of this insurance then the PRS is entitled to cancel the Agent’s membership.

The following definitions apply to Agents who are required to join a consumer redress scheme under CEARA

“Estate Agency Work” is defined as:

Things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as “the client”) who wishes to dispose of or acquire an interest in land —

(a) for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to acquire or, as the case may be, dispose of such an interest; and

(b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or, as the case may be, the acquisition of that interest;

“Complainant” is defined as a consumer of services provided by Agents undertaking Estate Agency Work namely:

a “seller”, in relation to residential property, means a person who claims that he is or may become interested in disposing of an interest in land in respect of that property (and includes a person who disposes of such an interest);

a “buyer”, in relation to residential property, means a person who claims that he is or may become interested in acquiring an interest in land in respect of that property (and includes a person who acquires such an interest).

Agents who are covered by the above definitions and join the PRS must:

a. inform their consumers of their membership with the PRS;

b. provide information about the PRS to all consumers when signing any agreement and how to raise a complaint with the PRS at the point any formal complaint is received;

c. provide a copy of their internal complaints procedure to all consumers or use the Model Complaints process available in the Member’s area of the PRS website;

d. take into consideration any special measures required to inform and explain their practices and procedures to vulnerable consumers;

e. comply, keep up to date with and act in accordance with all relevant legislation;

f. treat consumers equally regardless of sex, race, religion, disability and sexual orientation;

l. ensure all consumers are provided with clear written details of agreements with them;

m. ensure that they have appropriate Professional Indemnity Insurance cover in place and notify their professional indemnity insurer immediately if they are subject of a formal complaint;
n. comply with the National Trading Standard Estate Agency Team Guidance on Property Sales;

o. under the Estate Agents Act 1979 (as amended):

1. Provide full and detailed information about fees and charges for your services;

2. Disclose any personal interest that you may have in any sale;

3. Keep consumers promptly informed about offers received;

4. Handle consumers money properly in accordance with the Estate Agents Act (EEA) 1979 as amended.
The PRS is a consumer redress scheme offering redress to consumers of products offered by property professional members of the PRS. The PRS is authorised by the Chartered Trading Standards Institute to offer government approved ADR to the property industry under the ADR Regulation 2015. More information can be found at https://www.businesscompanion.info/en/quick-guides/consumer-contracts/alternative-dispute-resolution

The PRS offers redress to the following Property Professionals:

- Company/Private Landlords
- Cleaners
- Builders
- Gardeners
- Handymen
- Inventory Providers
- Movers
- Painters/Decorators
- Property Developers
- Property Sourcers
- Relocation Professionals
- Tenant Referencing Providers
- Utility (and other service) Brokers

The following definitions apply to Property Professional Members

“Complainant” is defined as a consumer of services provided by a Property Professional who is a Member of the PRS.

Property Professionals who join the PRS are expected to:

a. inform their consumers of their membership with the PRS;

b. display a PRS window sticker in all offices and display the PRS logo and link on their website;

c. provide information about the PRS to all consumers when signing any agreement and how to raise a complaint with the PRS at the point any formal complaint is received;

d. provide a copy of their internal complaints procedure to all consumers or use the Model Complaints process available in the PRS Member’s area of the website;

e. take into consideration any special measures required to inform and explain their practices and procedures to vulnerable consumers;

f. act in accordance with any Code of Practice the Member has agreed to abide by;

g. comply, keep up to date with and act in accordance with all relevant legislation;

h. treat consumers equally regardless of sex, race, religion, disability and sexual orientation;

i. Ensure all consumers are provided with clear written details of agreements made with them.

Property Professional Members are not legally required to agree to resolve a complaint using the PRS process. If the Member opts not to agree to resolve a complaint using the PRS process then the matter will be brought to the attention of the Compliance Officer who will investigate. The Compliance Officer may recommend the Member has their Membership cancelled due to the Member not co-operating with the PRS process as this is against the spirit of the Member’s Membership.
APPENDIX 4
Relevant Definitions for all Members

Award
A payment as outlined in a decision.

Client Money Account
A secure ring-fenced account used by the Member designated only for client money.

Client Money Protection Scheme
A Membership scheme which offers the benefit of a guarantee to cover any client money which is misappropriated or stolen by the owners of the Agent member.

Complainant
A consumer of services provided by Agents undertaking Lettings Agency Work, Property Management Work or Estate Agency work.

Complaint
A written communication from the consumer to the Member expressing dissatisfaction with the service provided.

Default Decision
The PRS’s final decision made in the event that the Member fails to respond or cooperate with the PRS.

Error in Fact or Law
An error in fact is not a difference of opinion on a matter, it is when a fact materially relevant to the case, which was set out in the complaint or response, has not been dealt with in the decision. An error in law would be an error based on interpreting any relevant law incorrectly.

Final Decision
The PRS’s final decision having taken into consideration any review request made by the parties. If the final decision is accepted by the Complainant then it is binding on the member. No further review request will be considered.

Member
Property Agent or Professional with a live membership with the PRS (this includes all members of staff of the company).

Memorandum of Understanding
The government authorised redress schemes share information when a Property Agent is expelled for non-compliance of a decision and the Property Agent will not be able to join one of the other schemes unless they comply with the outstanding decision.

Professional Indemnity Insurance
Professional indemnity insurance covers you for compensation you have to pay to your clients because of problems with your advice or work, including compensatory damages and claimant’s costs awarded against you. It should also pay your legal defence costs incurred. It may also pay for mistakes to be corrected and reimburse you for fees that your client might refuse to pay.
Proposed Decision
A decision provided by the PRS to the parties which can be subject to a review if either the Complainant or Member believes that there is an error in fact or law in the decision or the PRS has made an administrative mistake.

Subscription
The period of paid membership with the PRS is usually for one year.

Time and Trouble
A time and trouble payment is distinct from payments for actual losses or costs. It covers the time and trouble reasonably and legitimately expended by the complainant in having to pursue the complaint with the member and with the PRS.

Vulnerable Consumer
A person whose personal circumstances or characteristics affects their ability to understand a transaction or make a decision for example, language barrier, physical or mental disability.
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