

**Memorandum of Understanding (MOU)**  
**between**  
**The Property Ombudsman**  
**Ombudsman Services: Property**  
**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.

Ombudsman Services: Property is part of Ombudsman Services Ltd (OS), a company limited by guarantee-a-not-for-profit organisation, Ombudsman Services: Property provides a facility for the independent and impartial resolution of disputes between its members and their clients. Participating companies include those members of RICS, estate agents and other property professionals who have opted to join Ombudsman Services: Property. The OS Board is independent of the participating companies, appoints the Ombudsman and sets out the Terms of Reference for Ombudsman Services: Property.

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, Ombudsman Services: Property and the Property Redress Scheme ('the three schemes') offer independent dispute resolution to consumers and promote best practice by their participating companies/members.

## **2. The purpose of this MOU**

The three 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 three schemes;
- establishing what information is needed to further the effective resolution of cases;
- 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 three schemes recognise their respective Terms of Reference. The Property Ombudsman's Terms of Reference are attached at Annex A. The Terms of Reference of Ombudsman Services: Property are attached at Annex B. The Terms of Reference for the Property Redress Scheme are attached at Annex C. 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.

Participating companies of Ombudsman Services: Property who are also members of RIGS are subject to the relevant RIGS rules and regulations. Ombudsman Services: Property considers all relevant codes, legal and regulatory obligations.

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 three 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 three 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 three 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 either of the two other schemes.

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.
- (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.

## **7. Expulsion from Scheme Membership**

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) and (iii) NTSEAT and Trading Standards.

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<sup>1</sup> will not be re-admitted to the scheme on the basis of the same Directors<sup>2</sup> forming a new company. This information is to be shared between all 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.

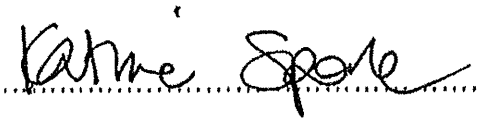
## 8. Review

The three schemes will regularly:

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

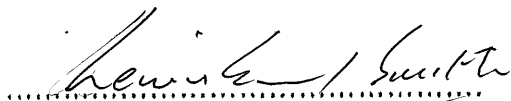
Nothing in this MOU precludes the three schemes from meeting on an ad hoc basis or from discussing cases (subject to statutory restrictions including that of data protection).

Signed for the Property Ombudsman



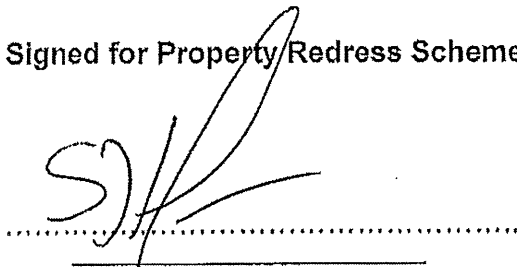
Date 2nd May 2017

Signed for Ombudsman Services: Property



Date 1<sup>st</sup> June 2017

Signed for Property Redress Scheme



Date 23<sup>rd</sup> May 2017

<sup>1</sup> The term 'company' has been used to cover all forms of business legal entities including, but not limited to sole traders, partnerships and companies.

<sup>2</sup> 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.