

## Introduction

The Board of the Property Ombudsman (TPO) has established a Compliance Committee (CC) to deal with TPO agents and businesses who have not complied with an Ombudsman award or direction, who have breached the relevant Codes of Practice and/or who have failed to meet their obligations as registered agents or member agents or businesses in other ways.

The CC will comprise up to three members (and no less than two) of the TPO Board, one of whom can be a sector director.<sup>1</sup> An independent director will be appointed to act as Chair. Before commencing the consideration of any referral, the CC will ensure that each of its members has had no prior involvement in any decisions or issues on which the disciplinary action is based or the registered agent or member agent or business.

## Terms of Reference

The CC will consider all matters referred to it from TPO and/or the Board relating to TPO members, who have agreed to follow the TPO voluntary Codes of Practice and failed to comply with the Codes and/or comply with other obligations on member agents or businesses and referrals relating to those agents who have chosen to register with TPO's Approved Redress Scheme for mandatory redress as required by the Consumers, Estate Agents and Redress Act 2007 and the Redress Schemes for Letting Agency and Property Management Work Order 2014.<sup>2</sup>

Referrals also include referrals about former TPO member agents or businesses where, for eligible complaints, there has been a failure to pay an award and/or comply with other directions made by the Ombudsman.

The CC may not change or otherwise alter the Ombudsman's decision on a complaint.

The CC will not consider potential breaches of legal obligations by registered agents, member agents and businesses.

1. For members of TPO, referrals may be considered concerning:
  - a. non-compliance with the Code/s of Practice. The Ombudsman, consistent with their Terms of Reference, may bring to the CC's attention any cases where they consider there has been any single but serious breach and/or any persistent breaches of the Code by a member;

And/or

- b. failure to pay awards or comply with other directions made by the Ombudsman;

And/or

- c. other failures by members to comply with general membership obligations.
2. The CC may consider referrals where those agents registered for redress with TPO's Approved Redress Scheme have:
    - a. failed to pay awards or comply with other directions made by the Ombudsman;And/or
    - b. failed to comply with general membership obligations.
  3. The CC may also consider instances where other TPO agents or businesses have:
    - a. failed to pay awards or comply with other directions made by the Ombudsman;And/or
    - b. failed to comply with general membership obligations.
  4. In addition the CC may consider:
    - a. reports concerning TPO members failing to meet the requirements of the Code approval compliance monitoring process;
    - b. actions taken by third parties (such as courts, regulators and professional organisations to which the member also belongs) that bring into question continuing membership of TPO.
  5. Upon receipt of a referral, the CC will, amongst other relevant matters, have regard to:
    - a. failures to comply with decisions of the Ombudsman, including payment of awards or failure to comply with other directions;
    - b. the extent and seriousness of any failure to comply with the relevant Code of Practice (for TPO member agents);
    - c. the nature of any single but serious breach of the relevant Code of Practice (for TPO member agents) and/or persistent breaches of the relevant Code and/or any breach of general membership obligations;
    - d. whether the consequences of the breach(es) were foreseeable or deliberate and/or to the advantage of the business.
  6. The CC may also, when asked, give advice to the Ombudsman or to the Board on issues concerning membership obligations, compliance, the interpretation of the Codes of Practice or the development of Best Practice.

<sup>1</sup> Sector Director means a non-executive Director who is a natural person and in the opinion of the Board is widely recognised as an expert in any significant part of the Sector (being estate agency, property management and lettings and such other industries as may be determined by the Board from time to time).

<sup>2</sup> The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

## Disciplinary Procedures

7. Where a referral relates to an agent or business already expelled or excluded from registration and/or membership of TPO by the CC, the CC will inform the agent or business of the referral and what action in relation to the referral is required before readmittance for registration or membership would be considered by TPO.
8. For other referrals, upon referral to the CC, TPO will inform the agent or business that the matter has been referred for the CC's consideration, the basis of the referral and the action the CC could take. TPO will also inform the agent or business that TPO may, in appropriate circumstances, also provide information on the case to any other approved redress scheme, any Professional Body and any relevant authority (including any Trading Standards Officer or appropriate regulatory or other body) including when membership or registration has ceased. The agent or business will be invited to make comments within 14 days.
9. The CC will after 14 days consider a written referral report setting out the reasons for TPO making a referral. Where there is a failure to pay an award made by the Ombudsman, this report may also include a recommendation as to the action the CC should take.
10. At any point the CC may seek such additional relevant information as it needs to formulate a view, including seeking information and/or representations (written and/or oral) from the agent or business.
11. The CC will write to the agent or business with a copy of the referral report and invite written representations against the referral report and any recommendation. Where the referral report has no recommendation, the agent or business will be advised by the CC of the range of sanctions available to the CC and its provisional recommendation. Any representations by an agent or business should, unless in exceptional circumstances, be received in writing within 21 days of the date of the sending of the referral report.
12. The CC will review the referral report and any written representations made by the agent or business. However, if the agent or business requests a hearing and the CC agrees to that request, they may present their own case or be assisted by their solicitor or another third party. In these circumstances the CC may be assisted by its own legal adviser or another appropriate third party. The procedure to be followed at any hearing is for the CC to decide in each case.
13. The CC, having considered the referral report and any representations made within the time limit, will decide whether action is justified and what action the CC will recommend that the Board takes against the agent or business. If the CC recommends a disciplinary sanction, the agent or business will be informed of this in writing and will be advised that this will take effect within 21 days of the sending of the letter unless the agent or business requests in writing a review of the CC's decision. In that event, the CC's decision will be reviewed by the Review Committee.

## Review Committee

14. If the agent or business requests in writing within 21 days a review of the CC's recommendation, the Board will convene a Review Committee. The Review Committee will comprise any two members of the Board who have not been involved in any previous consideration of the referral or the agency or business involved. One of those members will be an independent director and act as Chair.
15. The Review Committee will consider the referral report, the CC's recommendation, any other relevant information, the request for a review and any other written representations made by the agent or business. The procedure by which the review is conducted is for the Review Committee to decide in each case. The Review Committee's role is to decide whether action is justified and, if so, what action should be recommended to the Board.
16. If the agent or business requests a hearing, and the Review Committee agrees to that request, they may present their own case or be assisted by their solicitor or another third party. In these circumstances the Review Committee may be assisted by its own legal adviser or another appropriate third party. The procedure to be followed at any hearing is for the Review Committee to decide in each case.

## Disciplinary Sanctions

17. As a result of its consideration, the CC or the Review Committee can, and in any combination, decide to recommend to the Board to:
  - a. Issue an informal written warning.
  - b. Issue a formal written warning.
  - c. Impose a fine.
  - d. Expel and/or exclude the agent or business from relevant parts of TPO's membership and/or registration for redress schemes as appropriate.
  - e. Require any recommendation by the Ombudsman to be met or require that the business take other relevant action.
  - f. Recommend the agent or business undertake training.
  - g. Apply other conditions to membership.

## Expulsion and Re-admittance

18. Any decision to recommend to the Board to expel and/or exclude an agent or business from the TPO membership and/or the Approved Redress Schemes will be provided in writing to the agent or business by the CC and/or the Review Committee. This will include full written reasons; an explanation of what the business must do to regain admittance; and any applicable timescale for re-admittance.
19. For the avoidance of doubt, agents against whom a Prohibition Order has been made under Section 3 of the Estate Agents Act 1979 or an Order under Section 85 of the Enterprise and Regulatory Reform Act 2013 will be removed from both the voluntary TPO and Approved Redress Schemes.

20. Where a Prohibition Order has been made against a person, TPO will undertake appropriate checks to establish that the individual is no longer employed by the agent/business prior to re-admittance.
21. Membership shall cease for any Scheme Member if it is in breach of any undertaking given to the Company in accordance with the Membership Deed. In accordance with the Articles of Association notice of cessation of Membership will be executed by the Chair of the Finance & Performance Committee as delegated to by the Chair of the Board.

#### **Other Matters**

22. The CC may from time to time review any guidance it gives to the Ombudsman or the Board as to the types of cases to be referred to it for its consideration.
23. The Ombudsman may seek guidance from the CC on whether or not they should refer a complaint they are considering directly to any appropriate regulatory body because it appears to trigger action under Section 3 of the Estate Agents Act 1979 or under Section 85 of the Enterprise and Regulatory Reform Act 2013.
24. Potentially serious breaches of legal obligations will be referred by the Ombudsman to the appropriate regulator/enforcement body. Other less serious instances may be dealt with by TPO who may seek assurances and, where appropriate, evidence from the agent or business that business practices are compliant.
25. During the referral or consideration of any disciplinary action, both the CC and the Ombudsman have a duty to consider whether the matter is one which raises the fitness of the agent to continue engaging in relevant agency work and accordingly whether it should be reported directly to the appropriate regulatory body because it appears to trigger action under Section 3 of the Estate Agents Act 1979 or under Section 85 of the Enterprise and Regulatory Reform Act 2013.

Approved by TPO Board - April 2019

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