

dti

Approval Process for
Redress Schemes under the
Housing Act 2004

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The Redress Scheme Approval Process under the Housing Act 2004

This notice explains the background to Part 5 of the Housing Act 2004 and sets out the process the Secretary of State will operate to assess applications to become a redress scheme for the purposes of the 2004 Act.

Applications are welcome from this point forward.

Introduction

Part 5 of the Housing Act 2004 makes provision for the approval by the Secretary of State of redress schemes for the investigation and determination by an independent person (the "ombudsman") of "relevant complaints"; it also enables the Secretary of State (by order) to require an estate agent to belong to a scheme. "Relevant complaints" are ones made by a seller or potential buyer of residential property, which relate to an act or omission affecting the complainant in the course of the estate agent's activities in relation to a home information pack.

Approval of redress schemes is dealt with in section 173 of the Act. Section 173 (4) provides that an application for approval of a redress scheme is to be made in such manner as the Secretary of State determines and is to be accompanied by such information as he requires. This note sets out the information the Secretary of State requires of applicants for approval and the matters he will in particular consider in deciding whether to grant approval.

Any applications for approval or any queries regarding this process should be directed to:

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Department of Trade and Industry
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London
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Email: Maria.Booker@dti.gsi.gov.uk

Please note that although applications for approval to operate as a redress scheme under the Housing Act 2004 can be received at any time, applications for schemes wishing to gain approval before 1 June 2007 should be received before 1 December 2006.

The legal framework

The statutory provisions relating to approval of redress schemes are largely, and deliberately, general in nature and provide a broad discretion for the Secretary of State to decide whether or not to approve a particular scheme. By virtue of section 173 (2), in determining whether or not a redress scheme is satisfactory he is to have regard to the provisions of the scheme; the manner in which it will be operated (so far as can be judged from the facts known to him); and the respective interests of members of the scheme and sellers and potential buyers of residential properties. Further, by virtue of section 173 (3) he can **only** approve a scheme if it makes satisfactory provision about the following matters:

- The matters about which complaints may be made (which may include non-compliance with a code of practice);
- The ombudsman's powers and duties in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint);
- The provision of information by the ombudsman to (i) the operators of other consumer redress schemes; and (ii) the Secretary of State or any other regulator of the activities of estate agents. An obvious example of the latter would be the Office of Fair Trading ("OFT") which enforces the Estate Agents Act 1979.

Approval criteria

In practice, the Secretary of State will, in deciding whether to grant approval to a redress scheme, take into account the following matters:

- The scope of the matters which may be investigated and determined;
- The criteria to be used to determine whether a complaint should be investigated, and the powers and duties the ombudsman has;
- The content and likely effectiveness of the scheme in providing free and independent redress for sellers and potential buyers of residential property, including any maximum figure it lays down for awards;
- The arrangements for securing that the ombudsman is independent;

- The provision made for raising awareness among consumers and members of the content and scope of the scheme;
- The provision made for sharing information with other consumer redress scheme administrators;
- The fitness of the administrator to operate the scheme, including the resources it has;
- Regulatory impact as regards the financial burden of membership on estate agents and any effect on competition between estate agents;
- The arrangements for co-operation with other relevant regulators, including the OFT;
- The procedure for investigating complaints, the extent of an investigation, and any provision for securing expert advice to assist with an investigation;
- The provision made on failure to co-operate with an investigation;
- The adjudications procedure in respect of complaints including notification of the decision to the relevant parties;
- Any arrangements for appeal against a decision of the ombudsman.

Information requirements

Applicants should also supply the following information:

- The constitution (e.g. Memorandum and Articles of Association), place of business and ownership of the redress scheme;
- Details of current membership, and the arrangements by which a person may become, and cease to be, a member;
- Its latest annual report and accounts and management accounts (if any). In the case of a newly established scheme for which accounts are not available, a detailed business plan showing projected cash flows and financing plans should be provided;
- Curriculum vitae for its senior officers and the ombudsman and details of any unspent convictions against them;

- The rules of the scheme governing redress, including the powers of the ombudsman and the duties of members;
- The arrangements for the appointment of the ombudsman and for his removal from office;
- Any terms of reference for the ombudsman;
- Any recent annual or periodic reports it has issued;
- Any code of practice it has promulgated;
- Any other regulatory arrangements including other redress arrangements for which the applicant is responsible (note, section 172 (5) envisages that an approved redress scheme may operate a wider redress scheme for those members who have voluntarily accepted that jurisdiction);
- Any other evidence or argumentation the applicant wishes to submit in support of its case.

The Secretary of State, in deciding whether to grant approval to a redress scheme, may request any other information he considers to be relevant to the application.

It is our current intention that all applications will be published in full on the DTI website and to invite comments from interested parties (normal wording about requesting confidentiality).

The Government intends to announce whether it has approved any applications to become a redress scheme for the purposes of the 2004 Act, early next year in order for the order requiring estate agents and other HIP providers to belong to a redress scheme well in advance of the order coming into force. The order is planned to come into force on 1 June 2007 to coincide with the introduction of Home Information Packs.