



Department for
Communities and
Local Government

Lettings Agents and Property Managers

Which Government approved redress scheme do you belong to?

It is a legal requirement for all lettings agents and property managers in England to belong to a Government approved redress scheme from 1 October 2014

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Introduction

New legislation has been introduced which means that from 1 October 2014 it is a legal requirement for all lettings agents and property managers in England to join one of three Government-approved redress schemes.

Whilst the majority of lettings agents and property managers provide a good service there are a minority who offer a poor service and engage in unacceptable practices. This requirement will mean that tenants and landlords with agents in the private rented sector and leaseholders and freeholders dealing with property managers in the residential sector will be able to complain to an independent person about the service they have received. Ultimately the requirement to belong to a redress scheme will help weed out bad agents and property managers and drive up standards.

The requirement will be enforced by local authorities who can impose a fine of up to £5,000 where an agent or property manager who should have joined a scheme has not done so.

This leaflet provides information about the requirement and who it applies to. It is designed to cover the most common situations but it cannot cover every scenario and is not a substitute for reading the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 (SI 2014 No. 2359) which can be found at:

<http://www.legislation.gov.uk/uksi/2014/2359/contents/made>

What does this mean for lettings agents and/or property managers?

All lettings agents and property managers in England should join one of the three Government approved redress schemes. This is a legal requirement from 1 October 2014.

The three schemes are:

Ombudsman Services Property (www.ombudsman-services.org/property.html)

Property Redress Scheme (www.theprs.co.uk)

The Property Ombudsman (www.tpos.co.uk)

How do I know if this requirement applies to me?

Guidance on what we mean by lettings agency work and property manager work and who the requirement applies to is set out below. If you are not clear whether the requirement applies in your individual circumstances you should seek legal advice.

What do we mean by ‘lettings agency work’?

‘Lettings agency work’ is things done by an agent in the course of a business (see below) in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988 (the most common type of tenancy) except where the landlord is a private registered provider of social housing or the tenancy is a long lease.

Lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided;
- providing a way for landlords or tenants to continue to communicate directly with each other.

It also does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector because a local authority is already a member of the Housing Ombudsman Scheme.

The intention is that all “high street” and web based letting agents, and other organisations, including charities, which carry out lettings agency work in the course of a business will be subject to the duty to belong to an approved redress scheme.

Employers who find homes for their employees or contractors; higher and further education authorities and legal professionals are excluded from the requirement.

What do we mean by ‘property managers work’?

Property management work means things done by a person in the course of a business (see below) in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

However, it does not include things done by, amongst others, registered providers of social housing, that is, housing associations and local authorities who are social landlords, as these organisations are already required to belong to the Housing Ombudsman Scheme.

For there to be property management work, the premises must consist of, or contain:

- a) a dwelling-house let under a long lease - "long lease" includes leases granted for more than 21 years, leases granted under the right to buy, and shared ownership leases;
- b) an assured tenancy under the Housing Act 1988; or
- c) a protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector. It would also arise where one person instructs another to manage a block of flats (often with responsibility for the common areas, corridors, stairwells etc.) that contains flats let under a long lease or let to assured or protected tenants.

The legislation will apply to people who in the course of their business (see below) manage properties, for example, high street and web based agents, agents managing leasehold blocks and other organisations who manage property on behalf of the landlord or freeholder.

The requirement to belong to a redress scheme does not apply to Managers of commonhold land, student accommodation and refuge homes; receivers and insolvency practitioners; authorities where Part 3 of the Local Government Act 1974 applies; right to manage companies; legal professionals and property managers instructed by local authorities and social landlords.

What do we mean by 'in the course of business'?

The requirement to belong to a redress scheme only applies to agents carrying out lettings or property management work 'in the course of business'. The requirement will therefore not apply to 'informal' arrangements where a person is helping out rather than being paid for a role which is their usual line of work. Some examples of 'informal arrangements' which would not come under the definition of 'in the course of business' are set out below:

- someone looking after the letting or management of a rented property or properties on behalf of a family member or friend who owns the property/properties, where the person is helping out and doesn't get paid or only gets a thank you gift;
- a friend who helps a landlord with the maintenance or decoration of their rented properties on an ad hoc basis;
- a person who works as a handyman or decorator who is employed by a landlord to repair or decorate their rented property or properties when needed;
- a landlord who looks after another landlord's property or properties whilst they are away and doesn't get paid for it;

- a joint landlord who manages the property or properties on behalf of the other joint landlords;

Whilst it is not possible to cover all eventualities in this note one of the key issues to consider when deciding what could be considered an 'informal arrangement' is whether the person doing the letting or property management work is helping out an individual as opposed to offering their services to anyone who wants to use and pay for them.

Does the requirement apply to landlords?

Landlords are not explicitly excluded from the requirement but are not generally caught by the definitions given above as they are not acting on instructions from another party.

Does the requirement apply to resident management companies?

Resident management companies are not explicitly excluded from the requirement although, in many cases, these are not caught by the legislation. Resident management companies can arise in different circumstances, but where the residents' management company owns the freehold and manages the block itself there is no requirement for the company to join a redress scheme. This is because, under the definition, property management work only arises where one person instructs another person to manage the premises and, in this case, the person who owns the block (and is responsible for its management) and the person managing the block are one and the same.

Likewise, where a resident management company does not own the freehold but is set up and run by the residents and manages the premises on behalf of the residents this would also be excluded as the work is only in respect of the residents' own premises and would not be operating in the normal course of business.

Does the requirement apply to Charities?

Charities are not explicitly excluded because any charity that is not operating as a business will already be exempt from the requirement. Charities which find accommodation for homeless people in the private rented sector often deliberately mirror the activities of a letting agent but only work with homeless people. Unless they are charging a fee for this service in these cases the charity could argue that it is not operating in the course of a business and therefore be excluded from the duty.

Estate agents are already required to belong to a redress scheme – does this mean that those agents who are also lettings agents are already covered?

Estate agents who also carry out lettings agency work should check with their redress scheme whether the terms of their existing membership covers their lettings agency work as well as their estate agency work.

Where a lettings agent or property manager already belongs (on a voluntary basis) to The Property Ombudsman or the Ombudsman Services Property scheme – both of which have been running for some time – do they need to do anything?

No, a lettings agent or property manager who already belongs to The Property Ombudsman or Ombudsman Services Property scheme will automatically become a member of the approved scheme.

How does a lettings agent or property manager join one of the schemes?

Joining any of the three schemes involves a simple application process which can be done online. Paper application forms are also available where needed. More information about the membership requirements, joining instructions and fees can be found on each of the scheme websites, given above.

What happens if a lettings agent or property manager doesn't join one of the redress schemes?

Local authorities can impose a fine of up to £5,000 where a lettings agent or property manager who should have joined a scheme has not done so.

The authority must give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty. The lettings agent or property manager will have 28 days to make written representations or objections to the authority, starting from the day after the date the notice of intent was sent.

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made.

Is there a right of appeal against the fine?

Yes, a lettings agent or property manager can appeal against the penalty to the First-tier Tribunal. The appeal must be made within 28 days of the day on which the final notice was sent.

What happens if a lettings agent or property manager fails to join one of the redress schemes after the imposition of a fine?

The local authority can impose further penalties if a lettings agent or property manager fails to join a redress scheme despite already having had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager if they continue to fail to join a scheme.

How will the local authority know whether a lettings agent has joined one of the redress schemes?

Each scheme will publish a list of members on their respective websites so it will be possible to check whether a lettings agent or property manager has joined one of the schemes.