

Information for people who are working as an estate agent - what you must do to meet your legal obligations

Supplementary guidance - The requirement to join a redress scheme

The National Trading Standards Estate Agency Team, hosted by Powys County Council, is the lead enforcement authority in the UK for the Estate Agents Act 1979 ('the Act'). One of the team's responsibilities is to approve redress schemes under the section 23A of the Act. These schemes provide a mechanism for the investigation and determination of complaints by someone independent of the estate agent.

There are currently three approved redress schemes – Ombudsman Services: Property, Property Redress Scheme, and The Property Ombudsman. It is a legal requirement for anyone engaging in estate agency work in relation to residential property to be a member of one of the approved schemes. The NTS Estate Agency Team has been asked to clarify the position as to who needs to be a member of a redress scheme.

Initially you need to establish if you are engaging in 'estate agency work'. Section 1(1) of the Act defines the scope of 'estate agency work', and there are a number of exemptions provided under Section 1(2). The definition of 'estate agency work' is broad - guidance is available at www.powys.gov.uk/estateagency.

Secondly, having established you are engaging in estate agency work, you will need to be a member of a redress scheme if you deal in residential property.

Section 23C(2) of the Act defines residential property as '...any land that consists of or includes a building or part of a building¹ -

- (a) the whole or part of which is used as a dwelling or as more than one dwelling; or
- (b) that is (or is to be) offered for sale on the basis that the whole or part of it is suitable for such use or is intended to be so suitable by the time the seller disposes of his interest in it...'

If you are engaging in estate agency work in relation to residential property, then Article 2 of the Estate Agents (Redress Scheme) Order 2008 states that '...Every person who engages in relevant estate agency work shall be required to be a member of an approved redress scheme...'

¹ the reference to a building or part of a building (so far as relating to paragraph (b)) includes a reference to a building or part that is being or is to be constructed

Frequently asked questions

Q. I am an employee of a business – do I need to join a redress scheme?

A. Section 23A(4) of the Act states that the reference to persons who engage in ‘relevant estate agency work’ does not include persons who engage in that work in the course of their employment. Consequently, employees do not need individual membership of a redress scheme.

Q. What does it mean by ‘every person’ – does this include the business?

A. The business, irrespective as to legal status, is itself a ‘person’ and, if engaging in residential estate agency work, would need to be a member of a redress scheme.

Q. I deal only with commercial property, but occasionally some of the buildings have a caretaker’s flat – does this count as residential property?

A. Yes, that is covered by the definition of residential property and you need to join a scheme.

Q. It appears that I am not required to join a redress scheme but would like to become a member as I think it may be of benefit to me or to my customers. Can I do this?

A. Nothing prevents an approved redress scheme from offering membership to persons who are not subject to the legal duty to join, and all three schemes currently offer this facility.

Q. I am a lettings agent and already belong to a redress scheme. If I do any sales work do I need to register for that also?

A. The approved redress schemes all provide dual compliance membership for both lettings and sales agents. However you should check with your scheme provider to confirm the position and to, if need be, extend the scope of your membership to include estate agency work.

Q. I deal with the sale of houseboat moorings - are these classed as residential property?

A. If the mooring consists of land that includes a building (or part of a building) as described above then it is classed as residential property.

Q. My business is based in the UK but I only sell properties abroad – do I need to join?

A. Yes - if your business is located in, or trades from, the UK then you need to join a redress scheme.

Q. My business is based outside the UK but I have clients in the UK – do I need to join?

A. If you are carrying out estate agency work in the UK, you will need to join a UK scheme.

Important – please note

Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information. We accept no legal liability for the information provided. Only the courts can interpret statutory legislation with any authority. This advice is not intended to be a definitive guide to, nor substitute for, the relevant law - independent legal advice should be sought where appropriate. We aim to keep any advice or guidance timely and accurate - if any inaccuracies or omissions are brought to our attention we will try to deal with these as quickly as possible. You can contact the NTS Estate Agency Team at estate.agency@powys.gov.uk