

OFT approval of estate agents redress schemes

**OFT's response to the
consultation**

October 2007

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1. INTRODUCTION

- 1.1 The Consumers, Estate Agents and Redress (CEAR) Bill was introduced in parliament on 16 November 2006 and enacted on 19 July 2007. The CEAR Act enables the Secretary of State by means of an Order, to make it compulsory for estate agents in the UK to belong to an approved redress scheme that relates to all complaints about the buying and selling of residential property. Under the CEAR Act, these redress schemes will need to be approved by the OFT.
- 1.2 We issued a consultation paper on 30 April 2007 in which we invited stakeholders to comment on the draft criteria the OFT proposes to use when assessing applications to operate an approved scheme under the CEAR Act. We also sought responses on a number of specific questions relating to the proposed criteria.
- 1.3 We received a total of 14 responses to our consultation from a range of stakeholders listed in Annex C. We are grateful to all respondents to our consultation.
- 1.4 A number of respondents questioned whether the OFT would approve more than one estate agents redress scheme if there are multiple applications. Our view is that we do not regard this as a competitive tendering process where we will select only one applicant. In principle we are prepared to approve more than one scheme. The CEAR Act requires the OFT to consider the interests of members and consumers when assessing schemes and this will include taking into account the number of schemes already approved or likely to be approved. We believe that in the interests of consumers and members it should be a requirement that a scheme has a sufficient number of members to make it viable. Therefore, we have amended Criterion 2 to reflect this (see paragraph 2.18). We intend to keep the viability of individual schemes under ongoing review after approval.

1.5 In addition to publishing this response document we are also publishing the procedures for application and approval of redress schemes. These procedures can be found at:

http://www.offt.gov.uk/oft_at_work/markets/services/estate-agency/

2 SUMMARY OF RESPONSES TO QUESTION 1 – PROPOSED CRITERIA

Q.1 Do you agree with the proposed criteria? If not, please say why. What changes would you suggest?

- 2.1 We are very pleased to note that the majority of respondents agreed in principle with the proposed criteria as set out in the consultation document. This clearly demonstrates that we have taken the correct approach. There was a consensus from a wide range of diverse stakeholders that our draft criteria were clear, comprehensive and included the appropriate requirements to approve an effective estate agents redress scheme. We are therefore confident that we have a strong basis to proceed with using this approach as it has gained the firm support of the vast majority of respondents.
- 2.2 Where points were made or questions raised on specific criteria these are set out and addressed below.

Criterion 1

The ombudsman must be independent.

- 2.3 The majority of respondents agreed with the requirements of this criterion in order to ensure the ombudsman's independence.

Definition of ombudsman and redress scheme model

- 2.4 One respondent however questioned whether the criterion was in line with the definition of 'redress schemes' under 23A (8)¹ of the CEAR Act and was concerned that the criterion is strongly weighted to a single model of redress, that is an ombudsman scheme compliant with the

¹ A 'redress scheme' is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person ('the ombudsman').

British and Irish Ombudsman Association (BIOA) criteria. They suggested that there are other more flexible redress scheme models which would achieve the same objective.

- 2.5 Another respondent disagreed with the use of the term 'ombudsman' because of potential confusion with the existing Ombudsman for Estate Agents scheme. It was suggested that an alternative term such as 'scheme administrator' should be used instead.

OFT response

- 2.6 The wording used within the proposed criteria reflect the wording defining a redress scheme in the CEAR Act where the term 'ombudsman' has been used to define the 'independent person'. We accept that other titles may be in use within redress schemes and do not require that the term ombudsman must or should be used by all. It is for schemes to decide their structure and nomenclature.
- 2.7 Section 23A (8) (a) of the CEAR Act specifically states that one of the components of a redress scheme is that the person who determines complaints shall be 'independent'. The criterion for approval seeks to ensure that this is the case in accordance with the principles of best practice relating to independence where an individual is responsible for investigating and determining complaints. When considering applications for approval we will require a clear definition of the roles of such individuals as well as the structure and functions within the redress scheme.

Appointment procedures

- 2.8 There were also suggestions relating to the second requirement² which several respondents thought could be expanded to allow a minority

² Second requirement 'The ombudsman must not be appointed by those who are subject to investigation by him. Procedures for appointing the ombudsman must be independent of the industry to be regulated'.

representation of those subject to investigation to be on the appointing body, in the same way that this is acceptable for termination of the ombudsman's appointment under the sixth requirement.³

OFT response

2.9 In order to clarify the requirements for the appointment procedures, the second requirement will be reworded as follows:

'The ombudsman must not be appointed by those who are subject to investigation by him. This does not exclude minority representation of those subject to investigation on the appointing body, provided that the body is entitled to appoint only by majority decision.'

The procedures of any scheme must ensure that no appointments may be made unless the representation on the Board at the meeting making an appointment is such that those who are subject to investigation are in the minority at that meeting.'

Duration of appointment

2.10 Several respondents thought that the period of appointment of the ombudsman should be specified under the fourth requirement.⁴ It was suggested that this could follow the BIOA recommendation of a minimum of 3 years or until a specified retirement age, with the former being renewable. Other respondents suggested that the appointment should be for a fixed term (possibly 5 years), renewable for a single further term.

³ Sixth requirement 'Those subject to investigation by the ombudsman should not be entitled to exercise the power to terminate the ombudsman's appointment but this does not exclude their minority representation on the body which is authorised to terminate'.

⁴ Fourth requirement 'The ombudsman shall be appointed for a period of office for sufficient duration to ensure the independence of his actions and not be removable from his duties without just cause'.

OFT response

2.11 The purpose of the fourth requirement is to ensure that the ombudsman is appointed for a long enough period to safeguard his independence. However we accept that some guidelines may be useful for schemes in determining how long this minimum period should be and will therefore reword this criterion as follows:

'The ombudsman should be appointed for a period of office of sufficient duration to ensure the independence of his actions and not be removable without just cause. The appointment should be for a minimum of three years and may be renewable'

Previous involvement in the sector

2.12 The fifth requirement⁵ provides that the ombudsman should not have been connected with the industry for three years prior to his appointment. One respondent suggested that this period should be extended from three to five years as the public would not regard three years as sufficiently independent.

2.13 It was also suggested that the fifth requirement was overly prescriptive and denies the opportunity to draw upon individuals with experience, knowledge and understanding of how the industry and its markets function. It was proposed that this requirement should either be omitted or amended.

OFT response

2.14 The fifth requirement aims to ensure that the appointee can demonstrate he is sufficiently independent from the sector, and we do not agree that

⁵ Fifth requirement 'The ombudsman should not, during the three years prior to assuming his present function, have occupied a position in the industry to be regulated, remunerated or otherwise, which may cast doubt about his independence from the industry and his ability to reach impartial decisions.'

it would exclude all those who could bring relevant expertise/knowledge to the role. The three year period is a means for the individual to be able to demonstrate his independence from the industry.

- 2.15 We believe that a three year period (as specified in the European Commission recommendations on out-of-court settlement of consumer disputes (98/257/EC)) would be a sufficiently long period and therefore do not intend to change this requirement.

Consumer representation on the reporting organisation

- 2.16 There was a suggestion that the ombudsman should be required to report to the same body that appointed him with more information provided on the size and composition of this body. It was also suggested that the organisation the ombudsman reports to should include a consumer body/independent representative.

OFT response

- 2.17 In most cases we expect that the body appointing the ombudsman will be the same as the one to which he reports, and we do not believe it is necessary to make this a requirement for this criterion, nor to specify the size or composition of these bodies as long as they demonstrate they meet the requirements under the criterion. However, we do agree that consumer bodies should have an ongoing opportunity to be involved in the operation of the redress scheme and a suitable mechanism could be by representation on the body the ombudsman reports to. We will therefore amend requirement 8 as follows:

'The ombudsman should be required to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. At least one member of the reporting body should be from an organisation representing consumers. The body should also be responsible for safeguarding the independence of the ombudsman'

Criterion 2

The scheme must be adequately staffed and funded.

2.18 For the reasons given in paragraph 1.4 we have amended this criterion as follows:

'The scheme must be adequately staffed and funded and be able to demonstrate its ability to attract and retain a sufficient number of potential members to ensure it is viable.'

2.19 We have also added the following requirement:

- 'The scheme operator should be able to demonstrate that it is likely to be able to attract and retain a sufficient number of members to enable it to offer a viable alternative to other schemes in existence and ensure that it operates in the interests of members and consumers.'

Criterion 3

The scheme must be easily accessible to all those entitled to use it.

Informing consumers

2.20 Some respondents queried the overlap between elements of criterion 3 and criterion 15, both of which relate to ensuring consumers are aware of the redress scheme and how to access it. Criterion 3 requires individual scheme members to inform consumers of their right to complain to the ombudsman at an early stage. Criterion 15 requires that scheme operators must publicise the scheme to consumers so that they are 'made aware of the scheme at the point at which they make a choice to use an estate agent'. It was also suggested that all of the elements in criterion 3 related to criterion 15 so the two criteria should be merged. Additionally it was proposed that the need to publicise the scheme also belongs in criterion 4.

2.21 Another respondent suggested that the ombudsman should specify how the scheme is publicised in individual estate agents offices and that all

agents should also be required to include a statement about the scheme within their contracts. This statement would be drawn up by the ombudsman.

- 2.22 In relation to the third requirement⁶ it was proposed by one respondent that it should be made clear that the estate agent must pay for the whole process, including any appeals mechanisms.

OFT response

Informing consumers

- 2.23 The intention behind the requirement under criterion 3 is to ensure that individual scheme members inform consumers of their right to complain to the redress scheme. Criterion 15 is a requirement for scheme operators to publicise the scheme via wider reaching awareness campaigns.
- 2.24 We accept that this may have caused some confusion and will redraft the requirement under criterion 3 as follows:
- 'The right to complain to the ombudsman should be publicised by each scheme member so that consumers are aware of the scheme at the point at which they choose to use that member'
- 2.25 However we do not agree that we should be prescriptive within the criteria about how this objective can be achieved, although we would expect the scheme operator to provide guidance for its members on the best way to inform consumers about their membership of the scheme.

⁶ Third requirement 'Those complaining to the ombudsman must be able to do so free of charge'.

Criterion 4

Members of the scheme should be required under the terms of the scheme to have an effective internal complaints handling procedure set out in writing.

- 2.26 One respondent believed that the OFT should not be overly prescriptive about the content of the internal procedures and scheme operators should not be required to judge whether an applicant has an 'effective' internal complaints handling scheme in place. The respondent questioned whether the scheme operator should be responsible for monitoring and enforcing how effective the procedures are. They questioned whether the redress scheme should be allowed to eject the estate agent concerned from their scheme if they were not operating an internal scheme effectively. They considered that allowing a scheme to expel a member on this basis would not be appropriate.
- 2.27 Another respondent suggested that members should be required to give each client a written copy of their internal complaints handling procedures and draw their attention to it. A copy should also be visibly displayed within the agent's office. The criteria should also be more specific on setting out timescales, for example acknowledging a complaint within 5 days, sending a holding reply after 4 weeks, internal complaints handling process completed by 8 weeks (following the Financial Ombudsman Service standards).
- 2.28 Another respondent agreed with the need for internal complaints handling procedures and would like there to be a requirement that they should be approved by the redress scheme. Alternatively the scheme should be required to draw up guidelines for what it considers is an appropriate complaints scheme which must be followed by each member.

OFT response

- 2.29 We believe that the requirement for every member to have a written complaints handling procedure follows best practice for redress schemes

and the information requirements as set out in the criterion are the minimum a consumer should be able to expect. Proper procedures and consideration of the complaint by members at an early stage will assist the redress scheme to deal more effectively with appropriate complaints which cannot be resolved at member level.

- 2.30 We agree that it would be appropriate for the redress scheme operator to set out what constitutes an effective internal complaints handling procedure within the terms of the scheme. The member's compliance with the terms and conditions of membership would be expected to form a part of the ombudsman's consideration of any complaints against the member in line with the requirements under criterion 11 as well as the scheme operator's overall monitoring of members compliance. We refer to our response in para 2.68 in relation to the ability and grounds upon which a member could be expelled from a scheme.

Criterion 5

The ombudsman must proceed fairly and in accordance with the principles of natural justice.

- 2.31 One respondent was concerned that the requirement precluded specific recognition of the terms of any contract between the parties and suggested this should be included within the requirement. They also considered that the ombudsman should have a duty to take note of the provisions of a code of practice that applies to the business.
- 2.32 Another respondent wished to have more information on what would be covered by the term 'inequitable conduct'⁷ and would like to see it

⁷ 'The ombudsman is required to make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law and good practice including the principles of good administration. The ombudsman may take into account such factors as he considers relevant in accordance with such practice, including, but not limited to, any inequitable conduct or maladministration'.

explicitly include references to sales talk, promises, pressure selling etc, since these are areas where consumers often have a sense of grievance.

OFT response

- 2.33 We consider that this requirement is sufficiently broadly worded to ensure that the ombudsman has the scope to take into consideration all of the relevant issues and factors likely to be contained within transactions between consumers and estate agents without the need for a specific listing of eventualities. Therefore we will not be amending this criterion.

Criterion 6

Complainants must be informed that the decision will not be legally binding on them, but will be binding on the estate agent. They must also be kept informed of what their alternative actions could be at each stage of the procedures.

- 2.34 One respondent suggested that the criterion should be reworded to make clear that the ombudsman's decision is not automatically binding on the estate agent unless and until the complainant accepts it.
- 2.35 Another respondent suggested that the literature explaining the scheme should also clearly state the alternatives, including the possibility of legal action in certain circumstances.
- 2.36 It was also suggested that the second sentence implies that other actions open to the complainant will always be **alternatives** to pursuing a complaint through the scheme. In practice it may be the case that actions could be taken in **addition** to pursuing a complaint. 'Alternative actions' should be replaced by 'alternative or additional actions'.

OFT response

- 2.37 We agree that the criterion should be reworded to clarify the status of the decision as follows:

'Complainants must be informed that the decision will not be legally binding on them and that they will have the power to either accept or reject that decision, but that it will be binding on the estate agent if accepted by the complainant. They must also be kept informed of what their alternative or additional actions could be at each stage of the procedures'

Criterion 7

The scheme must make provision for dealing with all types of complaints from actual and potential buyers and sellers of residential property against those engaged in estate agency work in the UK. The scheme's complaint handling procedures must include reasonable timescales for dealing with the complaint, including a timescale for a decision to be made.

- 2.39 One respondent suggested it would be helpful for the OFT to set out what we consider to be reasonable timescales, for example the Financial Ombudsman Service (FOS) seeks to resolve complaints within 6 months. Another respondent proposed that setting timescales for a decision to be made was unacceptable as it puts process and bureaucracy before natural justice.
- 2.40 Several respondents also considered that redress schemes should include complaints about new build developers who sell directly to the public, internet sellers, those engaged in lettings, and in the case of mixed use commercial properties, for example, a shop with a flat above where the consumer buyer intends to live.
- 2.41 Clarification was also sought about how the 'scope of investigation of matters relating to non-compliance with voluntary codes or other documents' interacts with criterion 13 which states that 'a compulsory requirement to sign up or comply with a voluntary code of practice cannot form part of the membership criteria'.

OFT response

Timescales

- 2.42 We agree that an overall timescale for resolution of a complaint of 6 months would seem to be reasonable, but we also appreciate that individual scheme processes and procedures may vary and would not want to set deadlines within timescales which do not reflect that and may work to a complainant's disadvantage. We will agree proposed timescales with individual schemes to ensure that complaints are dealt with as effectively and quickly as possible.

Scope

- 2.43 The CEAR Act sets out the scope of the schemes both in relation to the types of complaints and the type of property that is covered. It provides that redress schemes can include the investigation and determination of complaints which are otherwise not covered where the members have voluntarily accepted the jurisdiction of the scheme over those complaints, but they are not obliged to do so.
- 2.44 The CEAR Act provides that complaints about members who have voluntarily signed up to a code of practice can include complaints about non-compliance with such a code. However it also provides that a requirement to sign up to such a code in order to be a member of a scheme is not permissible. As membership of an approved estate agents redress scheme will be mandatory for all estate agents it would not be appropriate to include a membership requirement which would in effect require estate agents to meet higher standards than are required by law, with penalties if they do not do so. Such higher standards, which would in effect be legislative requirements given the mandatory requirement of membership, would not have been introduced via the proper legislative process.
- 2.45 Although in general terms the OFT is supportive of voluntary codes of practice which provide additional benefits for consumers, mandatory membership would not be acceptable under the scheme's requirements.

2.46 We will amend the wording of the requirement under Criterion 7 to clarify this issue as follows:

- 'The scope of investigation of complaints concerning non-compliance with voluntary codes of practice or other documents with which scheme members have individually agreed to comply.'

2.47 In addition we have made amendments to assist with clarity. The requirements under this criterion will therefore now read as follows:

'The scheme should set out:

- The scope of the matters which may be investigated and determined and the criteria to be used to determine whether a complaint should be investigated.
- The duties and powers of the ombudsman in relation to the investigation and determination of complaints.
- The scope of investigation of complaints concerning non-compliance with voluntary codes of practice or other documents with which scheme members have individually agreed to comply.
- Complaints handling procedures including reasonable timescales at all stages of the process, including a timescale for a decision to be made.'

Criterion 8

The scheme's operation and its procedures must be transparent.

2.48 One respondent suggested that the scheme should be required to publish data on complaints including the names of those who have complaints upheld against them in order to learn lessons from similar cases. This would also enable consumers to identify agents who have a poor complaints record as well as allow agents with a zero complaints record to highlight the positive fact. The scheme should also be required to

publicise its operation on the internet including the judgements made by the ombudsman.

- 2.49 Another respondent queried whether all individual case outcomes should be reported in the public domain and said that such a requirement would be very burdensome and unnecessarily so.
- 2.50 Clarification was sought that the annual report made to the OFT will be made available to members of the public and interested parties by the OFT. It was also queried whether the annual report referred to was the ombudsman's report or a separate and specific report for the OFT.
- 2.51 Another respondent commented that they understood that it is common practice for redress scheme procedures to include scope for obtaining independent expert advice. In their view estate agency practice will become increasingly complex as a result of Home Information Packs and other changes. Accordingly, where a scheme includes the use of third party expert advice to assist with an investigation this should be made transparent.
- 2.52 They suggested that the following be added to the requirements to meet the criterion that the scheme's operation and procedures must be transparent:

'Any provision for securing expert advice to assist with an investigation.'

OFT response

Publicising complaints information

- 2.53 Publishing full details of those estate agents with complaints upheld against them may provide a useful indicator in some circumstances for consumers, but we believe that this information would need to be balanced with other factors, such as the size of the estate agent, number of transactions, seriousness of the complaint and remedies voluntarily in place in order to be proportionate. Publishing anonymised information would have the same effect across the industry of

highlighting poor practice and would be an effective mechanism to allow lessons to be learnt. Publication of the content of the complaint and the decision achieves this.

Annual report

- 2.54 Schemes will be required to prepare and publish an annual report to the OFT containing specified information on monitoring and complaints as well as publish easily accessible information for consumers on the operation of the scheme. In some circumstances the same document may be suitable to meet both requirements, but this is likely to depend on the format of the report/information. This does not preclude the scheme from publishing an additional report but this is not a requirement for OFT approval.

Additional wording

- 2.55 We agree that it is possible that expert opinion may be called in to assist with the investigation of a complaint although we would expect this to occur only in the minority of cases. However where this is likely to occur, this should be made transparent so we will include the suggested wording as an additional bullet point.
- 2.56 We have also made amendments to improve clarity for the requirements to meet this criterion, which now read as follows:

The scheme must publicise:

- The types of dispute which may be referred to the scheme
- The rules governing the referral of matters to the redress scheme
- The costs of the procedures
- The decision making arrangements
- The rules serving as a basis for decisions

- The legal force of a decision
- The provision for securing expert advice to assist with an investigation.

The scheme must also:

- Make its decisions and the reasons for them transparent. The names of the parties do not need to be publicised but the content of the complaint and the decision should be.
- In all cases investigated, notify in writing the decision and the reasons for it to the parties concerned.
- Ensure that complainants are provided with clear, comprehensible, and accurate information on the procedure including the process for initiating a complaint, duration of the procedure, possible outcomes, avenues for appeal or review of the decision, and whether the outcome is binding.
- Ensure that wherever possible, complainants are provided with information or help other than legal advice in the completion of necessary forms and documents (for example through the use of standard forms to facilitate the submission of necessary documents).

Scheme providers must:

- Prepare and publish an annual report to the OFT to include details of the outcome of its monitoring and reports of its investigations and decisions.
- Publish easily available information for consumers on the operation of the scheme.

Criterion 9

There must be a free exchange of information between all parties relating to a complaint.

- 2.57 One respondent said that the phrase 'see or hear' under requirement 1⁸ implied that oral hearings will be possible, and queried whether this was what was intended. If by 'hear' it is meant that sometimes the ombudsman may talk to the complainant or agent the respondent felt that this was acceptable and should remain.
- 2.58 The respondent also felt that the way the information is managed must be left to the ombudsman who should have total discretion – it should not mean that each document provided by each party must be seen in its entirety.

OFT response

- 2.59 We feel that wherever possible a complainant's request to present their case verbally should be accommodated, particularly in the case of consumers who would otherwise be significantly disadvantaged by following an entirely paper based process. Schemes should build in sufficiently flexibility within their procedures to ensure this can happen when requested and that parties should be aware of this option.
- 2.60 Full disclosure of information provided by the parties to the ombudsman should be made by all to ensure that the process is open, fair and transparent.
- 2.61 We have therefore amended the requirement under this criterion as follows:

⁸ Requirement 1 – 'The procedures must allow all the parties concerned to present their viewpoint before the ombudsman and see or hear the arguments and facts put forward by the other party and any experts statements'.

- 'The procedures must allow all the parties concerned to present their viewpoint before the ombudsman and see the arguments and facts put forward by the other party and any experts' statements. An oral hearing must be made available on request.'

Criterion 10

There must be a range of awards which take into account the level and type of detriment caused.

2.62 Two respondents said they were unclear about what was meant regarding the need to publicise the level and applicability of the awards. If it is a further requirement to publish all awards within the public domain one respondent considered it to be excessive and unnecessary. If schemes wish to publish their guidance on awards they should not be prevented from doing so. However new schemes may need time to develop a scale of awards based on experience. Each case is likely to be different, and the ombudsman's resources should not be diverted to responding to complaints about, why for example, an award has been given towards the bottom end of a range for one case compared to other awards in similar cases etc.

OFT response

2.63 It is important that complainants should be aware of the type and amount of an award that a complaint may merit in order to provide them with a reasonable expectation of the outcome of their complaint should it be successful. We also consider that all schemes should identify a likely range of awards at the start which could be amended with experience. We would not expect each individual award to be publicised, but an amalgamation of the numbers and types of awards should form part of the information provided to the OFT annually and also be included within information on the operation of the scheme published for consumers. The ombudsman should be able to explain the rationale behind their decision to make an award at a particular level in cases where the complainant questions the decision.

Criterion 11

The scheme shall ensure that decisions are implemented and that procedures are in place to deal with non-compliance with the ombudsman's decision and/or the scheme's rules.

- 2.64 One respondent was concerned that what was proposed confuses redress with regulation. They thought there would be a danger that some agents will join schemes that are enforced/policed by ombudsmen and others that are enforced by associated regulatory bodies. This would be both inconsistent and confusing. While it seems sensible for schemes to have the ability to enforce their rules and decisions of the scheme, it should be made clear that redress schemes are not regulators and don't replace them.
- 2.65 It was queried whether the OFT will provide guidance on what is fair and considered to be compliant with the Human Rights Act. Guidance was also requested as to what would be serious non-compliance. It was felt this needs clarification because if a firm is expelled from a scheme then it is assumed they could not undertake estate agency work.
- 2.66 Another respondent suggested that examples of what constitutes 'serious issues of non-compliance' needs to be defined as soon as possible, be published and consulted upon. Another suggestion was that those who don't comply with decisions should be named.
- 2.67 With regard to the fourth requirement⁹ it was suggested that it should be clarified that the appeals procedure is for use after an initial decision to expel a member from a scheme but before the member is actually expelled.

⁹ Fourth requirement 'There must be an appropriate appeals procedure to consider expulsion decisions from the scheme'.

OFT response

2.68 All schemes are required to monitor and ensure their members compliance with the scheme's rules and the ombudsman's decisions, and to operate a range of sanctions for non-compliance. Without this consumer confidence in the ability of the scheme to operate effectively could be reduced. Expulsion from the scheme should be used in cases of serious non-compliance such as, for example, persistent refusal to comply with awards made against them¹⁰. We have considered this matter further and have expanded the requirement under Criterion 11 relating to expulsion:

The procedures used to expel a member agent must

- Be set out clearly and notified to the member at the time of joining the scheme.
- Provide that other sanctions will be adopted in preference to expulsion where appropriate and likely to be effective. Expulsion should be for only the most serious of cases.
- Provide that the person considering expulsion has not previously been involved in any decisions or issues upon which expulsion is based.
- Decisions to expel must include the earliest date the agent can apply for readmission and what it is necessary for the member agent to do to obtain readmission.
- Provide details of the process to appeal or review the decision.
- The issues around the expulsion may result in the OFT considering the member's fitness to continue to practice under the Estate Agents

¹⁰ This is not an exhaustive list.

Act 1979. In these circumstances any decision on expulsion should be delayed until the regulatory proceedings have been determined.

- Provide procedures for application for readmittance after a specified period of time following expulsion including the giving of reasoned decisions.

Criterion 12

Appropriate information on complaints dealt with by the redress scheme must be routinely provided to:

- **Other OFT approved estate agents redress schemes.**
- **Other consumer redress schemes.**
- **The OFT or any other person/ organisation exercising regulatory functions in relation to the activities of persons engaging in estate agency work.**

2.69 One respondent suggested that additionally, schemes should be required to pass on to OFT any concerns they have about actual or suspected breaches of legislation so that the OFT can take action.

2.70 Another respondent was concerned that these requirements could have implications for competition practice and be a restraint to trade. If data is to be shared then it should be no more than the minimum necessary to ensure consistency of standards and it may be beneficial for the OFT to specify what data should be shared.

2.71 Other respondents did not understand why redress schemes should be required to share information or why the OFT should be provided with details including names of complainants and estate agents.

OFT response

2.72 These requirements are imposed by the CEAR Act.

- 2.73 The purpose of the first two points under this criterion is to ensure that schemes have appropriate procedures in place so that if, for example, a complaint encompasses related issues such as a complaint about a solicitor, there are mechanisms to ensure that information can be shared as necessary. Another example could be if an estate agent transfers from one scheme to another with an existing complaint, the details of the complaint should be transferable without the complainant needing to complete further paperwork. It is not intended that detailed information on complaints should be shared between schemes without a legitimate reason.
- 2.74 The third point obliges schemes to provide information on breaches of legislation to the OFT or other regulators as specified under the terms of a memorandum of understanding or similar document. These breaches must be notified as soon as the scheme operator becomes aware of them. It also enables the OFT to assess the operation and effectiveness of schemes and to take appropriate action where necessary to withdraw approval.

Criterion 13

Membership requirements to join the scheme must be fair and ensure that all those who are required to sign up to a redress scheme can do so.

Membership requirements

- 2.75 Clarification was sought regarding the wording 'membership requirements must not 'unfairly' restrict access to the scheme'.

OFT response

- 2.76 As it will be a mandatory requirement for all estate agents to join a scheme, we need to ensure that membership requirements are as open as possible and that unreasonable or inappropriate barriers are not imposed by the scheme operator.

Exclusion from membership

2.77 On the issue of exclusion from membership (requirement 2)¹¹ one respondent thought that exclusion from one scheme should not be grounds for disbarment from joining another scheme, except where exclusion is related to failures by the excluded business that had led directly to consumer detriment and remain uncorrected.

OFT response

2.78 If an estate agent has been expelled from a scheme we would not expect the scheme to be required to reinstate them without the agent complying with the scheme's requirements for reinstatement. Similarly the agent would not be able to join another scheme until the requirements had been met. For the sake of clarity this requirement will be amended as follows:

- 'Only estate agents who have been expelled from a scheme and have not met the requirements for reinstatement, or those who have been banned by the OFT in accordance with section 3 of the 1979 Estate Agents Act can be excluded from membership.'

Compliance with a voluntary code of practice

2.79 One respondent agreed that we should not expect a redress scheme to operate a code which is made a condition of membership and considered it is inappropriate for schemes to do so. They believed there should be a distinction between a voluntary code of practice and professional rules of conduct or a code owned by the industry. Another respondent thought that the requirement relating to a code¹² seemed to be

¹¹ Only estate agents who have been expelled from a scheme or banned by the OFT in accordance with section 3 of the 1979 Estate Agents Act can be excluded from membership.

¹² 'A compulsory requirement to sign up or comply with a voluntary code of practice cannot form part of the membership criteria'.

contradictory to the proper role of independent redress schemes in identifying and establishing good practice. Other respondents also seemed unclear about the reasoning for stating that compliance with a voluntary code of practice cannot form part of the membership criteria.

OFT response

2.80 The issue regarding compliance with a code of practice is dealt with under the OFT's response to criterion 7.

Criterion 14

The scheme's effectiveness must be monitored on a regular basis.

2.81 One respondent said they would welcome information on how we expect monitoring to be done, and suggested that mystery shopping could be appropriate. They felt it would also be valuable to require schemes to go beyond the basic performance indicators for example per cent of complaints completed within x days to more meaningful monitoring of actual practice. This would enable the scheme to root out poor practice and help reduce the number of complaints received.

2.82 Another respondent made the point that performance indicators are indications of 'efficiency'. Surveys of customers and estate agents would be measures of effectiveness.

OFT response

2.83 We will agree monitoring requirements with individual scheme operators which should include auditing of members compliance with the scheme's rules. Information on the speed and effectiveness of complaints handling by the scheme operators, and the results of customer satisfaction surveys will form part of the scheme's performance indicators. Proposals for monitoring will be agreed with the OFT before approval.

Criterion 15

The scheme operator must publicise the scheme to consumers and to existing and potential members.

- 2.84 One respondent said that the first requirement¹³ could be interpreted to mean that the scheme operator should be directly responsible for informing the consumer about the scheme at the point of their choosing an estate agent. In their view such an obligation is impractical.
- 2.85 Another respondent agreed it would be helpful for consumers to be made aware of the redress scheme as soon as they make their choice to use an agent. However, they questioned the ability of the operator to do this and suggested this should be made a responsibility of scheme members as part of their application to join the scheme.
- 2.86 It was also queried how much responsibility schemes are expected to bear for publicising the responsibility to belong to a redress scheme as opposed to publicising their scheme, and how this responsibility will be split between a number of schemes if more than one apply and are approved from the outset.

OFT response

- 2.87 The differing aims under criteria 3 and 15 are set out under the OFT's response to criterion 3. Both scheme operators and members will have **joint** responsibilities for informing consumers. However we appreciate that the information provided by scheme operators will be more general in nature. Accordingly we have amended the requirement under criterion 15 as follows:

¹³ 'Consumers will need to be made aware of the scheme at the point at which they make a choice to use an estate agent'

'Such plans should incorporate measures to make consumers aware of its scheme at the point at which they choose to use that member.'

- 2.88 Scheme operators will also be required to participate in raising awareness of the requirement to join a scheme once the Order has been laid requiring all estate agents to be members of a scheme. As it is not possible to predict at this stage how many schemes will be approved at that point, individual scheme operators responsibilities will need to be agreed at a later date.

Criterion 16

There must be independent procedures in place to consider and resolve complaints by consumers or member businesses about the service provided by the ombudsman.

- 2.89 One respondent said that an independent adjudicator would not be necessary for the customer who can continue to take the case by taking it to the courts. An individual to whom a complaint can be taken further would undermine the authority of the ombudsman. Instead there should rather be a process of review within the scheme itself.
- 2.90 Another respondent suggested that there should be a right of appeal against a ruling by the ombudsman that a complaint does not fall within his jurisdiction.

OFT response

- 2.91 We believe it is important for consumers and members to have confidence that the ombudsman is carrying out his functions according to the scheme's procedures. A complaints mechanism about the service provided should enable this confidence to be maintained and ensure that procedures are working effectively. However upon further consideration we have decided to amend the requirement to remove the need for the decision on such a complaint to be made by an independent adjudicator. It is however important that the process for determining such complaints

is such that consumers' confidence in the scheme is maintained. We are amending Criterion 16 as follows:

'There must be procedures in place to consider and resolve complaints by consumers or member businesses about the service provided by the ombudsman.'

2.92 Also the second requirement under Criterion 16 is amended as follows:

- 'The final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved.'

3 SUMMARY OF RESPONSES TO QUESTION 2 – OTHER CRITERIA

Q.2 Are there any other criteria that you think should be included? If so, please explain why.

3.1 One respondent suggested a further criterion should be added and suggested:

'Dissemination of good practice – this should be one of the functions of an ombudsman scheme. By highlighting endemic or new problems in the sector and explaining why decisions have been made, the industry should be able to learn and improve its standards.'

OFT response

3.2 We agree that sharing information on complaints and their outcomes will help to clarify and disseminate good practice, but we think that will be achieved by the requirements to publish the details of decisions under criterion 8 and therefore do not intend to include a further criterion.

4 SUMMARY OF RESPONSES TO QUESTION 3 – CHANGES TO WORDING

Q.3 Do you have any suggestions regarding changes to the wording of any of the criteria? Please explain why you propose these changes.

4.1 All of the issues raised under this question have been included within the responses given to the individual criteria under Question 1.

5 SUMMARY OF RESPONSES TO QUESTION 4 – EXPULSION OF MEMBERS

Q.4 The draft criteria at criterion 11 require schemes to have in place sanctions for non-compliance, which include expulsion of agents from the scheme for serious non-compliance. Do you think schemes should be able to expel members?

5.1 The majority of respondents agreed that it should be possible to expel an agent from a scheme. It was regarded as important for schemes to operate effectively that there must be a way to enforce their decisions and enforce the rules of the scheme.

5.2 However respondents also said that there would be difficulties particularly if by allowing a scheme to expel a firm it would mean that the firm cannot undertake estate agency work. Respondents also thought it would be unlikely if one scheme expelled a firm that another would accept it especially if MOUs are established. It was queried whether there would need to be appropriate hearings to consider whether to expel a member and an appeal mechanism and whether these would have to be Human Rights Act compliant. The respondent believed that quasi judicial decisions to remove individuals livelihoods are a matter for regulators not redress mechanisms, and the proposals will defacto do the opposite.

- 5.3 In addition a respondent was concerned that if more than one scheme is approved, a provision will be necessary to stop any person expelled from one scheme joining one of the other schemes.
- 5.4 Another respondent also agreed schemes should be able to expel members, but said they must be required to show the grounds on which expulsion may take place and must have an effective and fair procedure to allow it to take place, reinforced by a member agreement or contract.
- 5.5 Other respondents agreed that expulsion is a necessary sanction in the scheme's armoury but that it should only be used in the most serious cases of non-compliance, and even then only as a last resort. One respondent was reassured by the requirements proposed to meet criterion 11 which made it clear that the appropriate sanction for non-compliance must be proportionate and that options such as warning letters and fines will be more appropriate except in the most serious cases.
- 5.6 The issue of reinstatement was also raised, with one respondent highlighting that although it is important for schemes to be able to expel members this must be consistent where more than one scheme is authorised, for example, re-entry criteria should be advised at the point of expulsion. This would avoid an agent being expelled from one scheme and simply joining another where different standards exist.
- 5.7 Another view was that if members who flouted schemes were allowed to remain within the scheme, it would increase the likelihood that OFT would have to withdraw approval from the scheme.

OFT response

- 5.8 We agree that any sanctions and procedures to expel agents must be proportionate to the nature and frequency of non-compliance with the scheme's requirements and the ombudsman's decisions. We will be amending the requirements under criterion 11 to clarify this (see the OFT's response at paragraph 2.68).

6 SUMMARY OF RESPONSES TO QUESTION 5 – APPEALS PROCEDURE

Q.5 Do you think there should be a requirement for an independent appeals procedure for the ombudsman's decisions? Please explain why you think there should/should not be such a procedure.

- 6.1 The majority of respondents did not support a requirement for an independent appeals procedure for the ombudsman's decision.
- 6.2 The general view was that the ombudsman's decision should be final and binding on the respondent and final and binding on the customer if accepted by them and that this is the case with all other ombudsman schemes.
- 6.3 However it was also pointed out that although the general principle is that an ombudsman's decision is final and there is no appeal, it was questioned whether this is consistent with the Human Rights Act. In their view it would be sensible to have an appeals procedure as a check or safety net in case of error. Although some ombudsman schemes do have an independent reviewer to consider the process applied in reaching decisions they cannot overturn decisions of the ombudsman.
- 6.4 It was also pointed out that an appeal by the business when the consumer has accepted the decision would be unfair on the consumer. Also if the consumer does not agree with the decision they have the power to reject it and use the court. Allowing a right of appeal for the consumer would only create an additional financial burden on the business involved as they would need to pay for the appeal process which could result in confirmation of the decision only for the consumer to then exercise the power of rejection.
- 6.5 Another respondent considered that given the statutory framework which suggests the scheme proposed is being operated on behalf of the state, it is likely that any ombudsman's decision would be judicially reviewable.

OFT response

- 6.6 We agree with the majority of respondents that there should not be a requirement for an independent appeals procedure against the ombudsman's decisions. Consumers should however, retain their right to go to court if they do not agree with the decision.
- 6.7 We have carefully considered the issue of consistency with the Human Rights Act requirements and are confident that an appeals procedure does not need to be part of the approval criteria.

7 SUMMARY OF RESPONSES TO QUESTION 6 – ADDITIONAL GUIDANCE

Q.6 Is any additional guidance on meeting the criteria necessary? If so, please specify the format and content of such guidance.

- 7.1 The majority of respondents to this question did not feel that additional guidance was necessary. Two said that while they did not feel additional guidance was needed at this stage it may be useful later in the process once the final criteria are published and the application process is underway.
- 7.2 Some felt that particular criteria could include more details, or that there were terms that needed to be defined. The examples raised were:
- That more guidance should be provided on how independence could be achieved under criterion 1.
 - That it would help if terms such as 'reasonable' were defined (such as the reasonable timescales for dealing with complaints in criterion 4 and criterion 7).
- 7.3 Taking a different view, one respondent said that they appreciated the principles based approach adopted by the criteria and they would

welcome a degree of flexibility in how the criteria are to be applied, so that how schemes achieve a standard that meets the criteria can vary.

OFT response

- 7.4 Given the responses to this and other consultation questions we do not plan to draft additional guidance at this stage. However we will keep the need for additional guidance under review as the application process progresses and provide more information as necessary.

8 SUMMARY OF RESPONSES TO QUESTION 7 – CLARITY AND EASE OF USE

Q.7 Are the criteria clear and understandable? If not, please suggest how clarity and ease of use could be improved.

- 8.1 Most respondents to this question felt the criteria were, in general, clear and understandable. Again, respondents pointed to specific requirements under some of the criteria where they felt the wording could be made clearer and these have been considered under the OFT's response to the individual criteria under question 1.

OFT response

- 8.2 We are pleased that the majority of respondents found the criteria clear and understandable in general. We want to strike a balance in the wording of the criteria, providing enough detail to make them clear and explicit but without becoming too prescriptive so as to risk excluding alternative models or practices for redress schemes which would provide equal benefits.

9 SUMMARY OF RESPONSES TO QUESTION 8 – PRINCIPLES OF BEST PRACTICE

Q.8 Do you believe that the criteria omit any elements of generally accepted principles of best practice applicable to consumer redress schemes either from the sources listed at Annexe A of the consultation document or any other relevant sources?

9.1 With two exceptions, respondents felt that the criteria did not omit any generally accepted principles of best practice applicable to consumer redress schemes.

9.2 The two items raised for consideration were:

- The draft international standard for the specification of guidelines relating to the provision of external dispute resolution (redress) services, ISO 10003, which sets out 11 guiding principles for the operation of such services. While the respondent felt the draft criteria matched 10 of these principles quite clearly, they felt the eleventh criterion was omitted. This principle is 'Legality: A dispute resolution process must be operated in accordance with applicable law and the agreement of the parties'.
- The criteria should include timescales for consumers to complain to the ombudsman after the member business has given a final response to their complaint. This would avoid complaints relating to events in the distant past being brought to the ombudsman.

OFT response

9.3 We are pleased to note that the points covered by the draft international standard as far as appropriate appear to be already addressed within the draft criteria. We will review once the standard has been finalised.

9.4 In relation to Legality the requirement under criterion 5 means that the ombudsman must have regard to the relevant law in reaching a decision.

The decision will be binding on consumers only if they accept it that is, by agreement. However the nature of the statutory scheme is that it will be binding upon estate agents in such circumstances.

- 9.5 We would expect schemes to set out guidelines for timescales within which complaints should be made within its procedures which must be publicised under the requirements of criteria 7 and 8, although, we would not expect inflexible deadlines to be applied. We would expect schemes to be flexible in their approach and not unfairly restrict access to the scheme where the circumstances of the case indicate that to exclude complaints would be unfair, for example where the correct procedures had not been followed by the member.

ANNEXE

A QUESTIONS THE OFT POSED IN THE CONSULTATION DOCUMENT

- 1 Do you agree with the proposed criteria? If not, please say why. What changes do you suggest?
2. Are there any other criteria that you think should be included? If so, please explain why.
3. Do you have any suggestions regarding changes to the wording of any of the criteria? Please explain why you propose these changes.
- 4 The draft criteria at criterion 11 require schemes to have in place sanctions for non-compliance, which include expulsion of agents from the scheme for serious non-compliance. Do you think schemes should be able to expel members?
5. Do you think there should be a requirement for an independent appeals procedure for the ombudsman's decisions? Please explain why you think there should/ should not be such a procedure.
6. Is any additional guidance on meeting the criteria necessary? If so, please specify the format and content of such guidance.
7. Are the criteria clear and understandable? If not, please suggest how clarity and ease of use could be improved.
8. Do you believe that the criteria omit any elements of generally accepted principles of best practice applicable to consumer redress schemes either from the sources listed at Annexe A of the consultation document or any other relevant sources?

B DRAFT CRITERIA AS SET OUT IN THE CONSULTATION DOCUMENT

Criterion 1

The ombudsman must be independent.

Requirements to meet this criterion

- The ombudsman must be and be seen to be impartial and free from bias.
- The ombudsman must not be appointed by those who are subject to investigation by him. Procedures for appointing the ombudsman must be independent of the industry to be regulated.
- The jurisdiction, powers and method of appointment of the ombudsman should be publicised.
- The ombudsman should be appointed for a period of office for sufficient duration to ensure the independence of his actions and not be removable from his duties without just cause.
- The ombudsman should not, during the three years prior to assuming his present function, have occupied a position in the industry to be regulated, remunerated or otherwise, which may cast doubt about his independence from the industry and his ability to reach impartial decisions.
- The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated. Those subject to investigation by the ombudsman should not be entitled to exercise the power to terminate the ombudsman's appointment, but this does not exclude their minority representation on the body which is authorised to terminate.
- The ombudsman alone (or an appointed deputy) must have the power to decide whether or not a complaint is within the ombudsman's jurisdiction. If it is, the ombudsman (or an appointed deputy) must have the power to determine it.
- The ombudsman should be required to report to a body independent of

those subject to investigation, but this does not exclude their minority representation on that body. That body should also be responsible for safeguarding the independence of the ombudsman.

Criterion 2

The scheme must be adequately staffed and funded.

Requirements to meet this criterion

- The scheme must be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the ombudsman to function impartially, efficiently and appropriately.

Criterion 3

The scheme must be easily accessible to all those entitled to use it.

Requirements to meet this criterion

- The scheme should be directly accessible to complainants.
- The scheme's procedures should be straightforward for complainants to understand and use and not be unduly rigid or formal.
- Those complaining to the ombudsman must be able to do so free of charge.
- The right to complain to the ombudsman should be publicised by the scheme's members in such a way as to come to the attention of all the member's customers at any early stage of the relationship between the member and the customer.
- The scheme must be easily accessible to complainants without the need for legal representation or assistance.
- The special needs of disadvantaged or vulnerable consumers should be considered so that they, or their representatives, can access the scheme easily.

- The scheme should not deprive the complainant of the right to be represented or assisted by a third party at all stages of the procedure.

Criterion 4

Members of the scheme should be required under the terms of the scheme to have an effective internal complaints procedure set out in writing which should include:

- **full contact details;**
- **any information the complainant must provide - this must be reasonable and not require excessive detail or form-filling**
- **reasonable timescales for dealing with the complaint, including a timescale for resolution, and**
- **details of the approved redress scheme and how the complainant can access it.**

Criterion 5

The ombudsman must proceed fairly and in accordance with the principles of natural justice.

Requirements to meet this criterion

- The ombudsman is required to make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law and good practice including the principles of good administration. The ombudsman may take into account such factors as he considers relevant in accordance with such practice including but not limited to any inequitable conduct or maladministration.

Criterion 6

Complainants must be informed that the decision will not be legally binding on them, but will be binding on the estate agent. They must also be kept informed of what their alternative actions could be at each stage of the procedures.

Criterion 7

The scheme must make provision for dealing with all types of complaints from actual and potential buyers and sellers of residential property against those engaged in estate agency work in the UK. The scheme's complaints handling procedures must include reasonable timescales for dealing with the complaint, including a timescale for a decision to be made.

Requirements to meet this criterion

- The provision should set out the scope of the matters which may be investigated and determined and the criteria to be used to determine whether a complaint should be investigated.
- The duties and powers of the ombudsman in relation to the investigation and determination of complaints.
- The scope of investigation of matters relating to non-compliance with voluntary codes of practice or other documents.
- Complaints handling procedures must set out reasonable timescales at all stages of the process, including a timescales for a decision to be made.

Criterion 8

The scheme's operation and its procedures must be transparent.

Requirements to meet this criterion

The scheme must publicise:

- The types of dispute which may be referred to the scheme.
- The rules governing the referral of matters to the redress scheme.
- The costs of the procedures.
- The decision making arrangements.

- The rules serving as a basis for decisions.
- The legal force of a decision.

The scheme must also:

- Make its decisions and the reasons for them transparent. The names of the parties do not need to be publicised but the content of the complaint should be and the decision.
- In all cases investigated, notify in writing the decision and the reasons for it to the parties concerned.
- Ensure that complainants are provided with clear, comprehensible, and accurate information on the procedure including the process for initiating a complaint, duration of the procedure, possible outcomes, avenues for appeal or review of the decision, and whether the outcome is binding.
- Ensure that wherever possible, complainants are provided with information or help other than legal advice in the completion of necessary forms and documents (for example through the use of standard forms to facilitate the submission of necessary documents).
- Prepare and publish an annual report to the OFT to include details of the outcome of its monitoring and reports of its investigations and decisions.
- Publish easily available information for consumers on the operation of the scheme.

Criterion 9

There must be a free exchange of information between all parties relating to a complaint.

Requirements to meet this criterion

- The procedures must allow all the parties concerned to present their viewpoint before the ombudsman and see or hear the arguments and facts put forward by the other party and any experts' statements.

- The ombudsman must have the authority to request and receive all necessary information and documents from those being investigated subject to parties rights to refuse to disclose information on legal grounds were the matter proceeding in a court.

Criterion 10

There must be a range of awards which take into account the level and type of detriment caused.

Requirements to meet this criterion

The range of awards must include the following:

- providing an apology or explanation
- paying compensation
- taking such other actions in the interests of the complainant as the ombudsman may specify, and
- the level and applicability of awards must be publicised.

Criterion 11

The scheme shall ensure that decisions are implemented and that procedures are in place to deal with non-compliance with the Ombudsman's decision and/or the scheme's rules.

Requirements to meet this criterion

- There must be procedures in place to ensure that decisions and the scheme's rules are complied with.
- There must be procedures for non-compliance with decisions and the scheme's rules which include a specified range of sanctions, for example warning letters, fines, expulsions from the scheme, etc.

- The procedures must be fair to the member agent and only allow expulsion for serious issues of non-compliance.
- There must be an appropriate appeals procedure to consider expulsion decisions from the scheme.
- There must be procedures in place for readmittance to the scheme following expulsion.

Criterion 12

Appropriate information on complaints dealt with by the redress scheme must be routinely provided to:

- **Other OFT approved estate agent redress schemes.**
- **Other consumer redress schemes.**
- **The OFT or any other person/organisation exercising regulatory functions in relation to the activities of persons engaging in estate agency work.**

Requirements to meet this criterion

- Agreements such as Memoranda of Understanding or similar should be made with other organisations as appropriate.
- Information provided to the OFT or other regulator must include the names and details of the parties involved.
- Procedures ensuring compliance with the Data Protection Act 1998 must be adopted.

Criterion 13

Membership requirements to join the scheme must be fair and ensure that all those who are required to sign up to a redress scheme can do so.

Requirements to meet this criterion

- Membership requirements must not unfairly restrict access to the scheme.
- Only estate agents who have been expelled from a scheme or banned by the OFT in accordance with section 3 of the 1979 Estate Agents Act can be excluded from membership.
- A compulsory requirement to sign up or comply with a voluntary code of practice cannot form part of the membership criteria.

Criterion 14

The scheme's effectiveness must be monitored on a regular basis.

Requirements to meet this criterion

- Performance indicators on the scheme's operation to be agreed with OFT.
- Scheme operator to provide information on customer satisfaction surveys and performance indicators to OFT at specified intervals.

Criterion 15

The scheme operator must publicise the scheme to consumers and to existing and potential members.

Requirements to meet this criterion

- Consumers will need to be made aware of the scheme at the point at which they make a choice to use an estate agent.
- Scheme operators must implement marketing and awareness plans to raise awareness of the scheme to consumers and estate agents.

Criterion 16

There must be independent procedures in place to consider and resolve complaints by consumers or member businesses about the service provided by the ombudsman.

Requirements to meet this criterion

- These procedures should relate only to the service provided by the ombudsman when dealing with the case and not to the decision itself.
- The final decision on the complaint must be made by an independent adjudicator with the authority to direct how the problem will be resolved.

C LIST OF RESPONDENTS

Age Concern

Association of Home Information Pack Providers

British and Irish Ombudsman Association

Citizens Advice

Department of Trade and Industry ¹⁴

Financial Services Authority

IDRS Ltd

Local Authorities Coordinators of Regulatory Services

National Consumer Federation

Ombudsman for Estate Agents Ltd

Royal Institute of Chartered Surveyors

The Council on Tribunals

The Ombudsman Service Ltd

Which?

¹⁴ Now the Department for Business, Enterprise and Regulatory Reform