
Estate agents redress schemes – Policy and procedures for withdrawing OFT approval

1. Withdrawal of approval

Factors relevant to the exercise of OFT's discretion when considering withdrawal of approval

- 1.1 The OFT has the power to withdraw approval from any estate agents redress scheme that it has approved under s23A and Schedule 3 of the Estate Agents Act 1979 ('EAA'). The overriding principle for a redress scheme to maintain approval is that the scheme is satisfactory for the purpose of s23A of the EAA. Therefore, that all of the relevant criteria are continually met and that the redress scheme is effective in dealing with consumer complaints made under the scheme.
- 1.2 When exercising its discretion, the OFT may take the following factors into account, although this is not an exhaustive list.
 - The redress scheme's overall effectiveness in investigating and determining consumer complaints after OFT approval is granted.
 - Where the OFT is aware that a criterion/criteria may no longer be met, which may result from changes made to the scheme:
 - The importance of the criterion/criteria in relation to its effect in dealing with consumer complaints. Material changes of circumstances in the estate agency sector could also be important.
 - The seriousness of the failure to comply with the criterion/criteria for example, whether it is an ongoing occurrence or a single lapse.
 - Whether the failure has occurred despite warnings and/or advice from the OFT.
 - Effectiveness of any previous remedial action undertaken by the scheme operator to rectify the failure.

- Statements made by the scheme operator to the OFT in its application relating to how it intended to meet the criteria. If any such statement proves to be incorrect, the OFT will take this into account.

1.3 The OFT will consider each case on its own merits, taking into account the nature and seriousness of the failure to meet the criterion/criteria and its effects. The OFT may also take into account factors other than non-compliance with the criteria which result in the scheme failing in the OFT's opinion to continue to make satisfactory provision for any of the matters referred to in Schedule 3 paragraph 2 of the EAA 1979 as amended and/or failing to be operated in a satisfactory manner. In assessing whether a scheme should continue to be approved the OFT will take into account the matters specified in Schedule 3 paragraph 3 of the EAA.

2. Procedures for withdrawal of approval

Possible key trigger events (this list contains examples but is not exhaustive)

- Serious breaches of the criteria.
- Failure of remedial action undertaken by the scheme operator to rectify non-compliance with the criteria/criterion following correspondence with the OFT. The seriousness of the non-compliance and failure to remedy it will be considerations here.
- Failure of the scheme to continue to make satisfactory provision for the matters specified in Schedule 3 to EAA 1979 and in particular Paragraph 2(2).
- Failure of the scheme to be implemented in accordance with best practice.
- Failure of the scheme to be operated in a satisfactory manner (for example failure to provide satisfactory redress, unfair expulsion of members).
- Failure of the scheme to operate in a way which reflects the interests of consumers and members.

Procedures

2.1 The OFT receives and/or gathers information, either by monitoring or by representations from external parties:

- that the redress scheme is not working effectively,
- or that the redress scheme is not complying with the criteria/criterion,
- or that in the OFT's opinion, raises concerns about whether the scheme is satisfactory.

The initial findings are compiled by the OFT case manager.

2.2 A formal notice/letter will be sent to the scheme operator highlighting:

- That the OFT is considering taking withdrawal of approval action and the grounds for the proposed withdrawal.
- The potential seriousness of the action.
- That the procedures may not lead to withdrawal if the scheme operator can show that the redress scheme continues to be effective and continues to meet the criteria and makes satisfactory provision in relation to the requirements of the EAA.
- If considered by the OFT to be appropriate, an invitation to the scheme operator to make proposals for remedial action - this will not necessarily avoid withdrawal of approval.
- A request for further information from the scheme operator if appropriate.
- An invitation for oral and/or written representations by the scheme operator.

2.3 The scheme operator will be given a minimum of 30 days¹ to respond to the notice/letter in writing and/or orally.

2.4 Meetings/discussion will be held with the scheme operator if appropriate.

2.5 Following consideration of the representations the OFT shall decide, whether to proceed to taking the action described in paragraph 9 or whether to send a formal letter to the scheme operator setting out the OFT's concerns and any agreements/undertakings/timescales

¹ This period is required under Schedule 3, 7 (c) of the Consumers, Estate Agents and Redress Act 2007.

agreed from the discussions. Undertakings/remedial action are not a right, but an opportunity that may be granted by the OFT if considered appropriate in the circumstances.

- 2.6 Scheme operators will be given a reasonable opportunity to respond in writing. The implications of not complying with any agreed remedial action will be set out to the scheme operator.
- 2.7 The OFT case manager will seek confirmation of compliance with agreed actions within the agreed timescales. If all agreed actions by the scheme operator are carried out satisfactorily and there are no other concerns, no further action will be taken, although monitoring by the OFT will continue.

Agreed actions not carried out

- 2.8 If the agreed actions have not been carried out satisfactorily within the timescales, or on a later review it is found that they are no longer being maintained, the OFT case manager will consider whether an extension of the deadline is appropriate and negotiate/agree this with the scheme operator. Further meetings will be arranged if necessary.
- 2.9 The OFT case manager will prepare a recommendation for withdrawal of approval:
- if actions are still not carried out satisfactorily,
 - or if allowing more time is inappropriate,
 - or if, following the representations referred to in paragraphs 2.3 to 2.6 above, the OFT considers that it is appropriate to do so.
- 2.10 A 'Notice of intention to withdraw' will be sent to the scheme operator, again outlining the grounds for the proposed withdrawal, with a further 30 day deadline for response to allow them to provide further oral and/or written representations to officials or to the OFT Board, before the recommendation is sent to the full OFT Board for a decision.
- 2.11 The OFT will consider and action any points raised/evidence provided by the scheme operator on the notice.
- 2.12 If the decision to withdraw approval is confirmed by OFT Board, the OFT will formally notify the scheme operator of the withdrawal of approval by issue of a 'Notice' setting out the decision and the grounds. The 'Notice' will be sent to the scheme operator

electronically (by email) as well as hard copy, and it will be signed by the CEO. The withdrawal of approval status will take effect from the date specified within the 'Notice'.

- 2.13 The scheme operator will be required to send a copy of the notice (either hard copy or by email) to every member of the scheme within one working day of receiving it notifying members of the need to join another scheme.
- 2.14 A coordinated transfer plan should be agreed with the OFT and other approved scheme operators to ensure that the service to consumers is not damaged and that there is continuity in the safe handling of complaints.
- 2.15 A press notice will be issued by OFT regarding withdrawal of approval and plans for transfer of complaints.

The OFT reserves the right in exceptional circumstances to shorten the procedures outlined above, for example, where the scheme or scheme administrator ceases to exist subject to statutory restrictions.