

# Property Management Redress Schemes – What Leaseholders need to know

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# What is being done and why?

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- 4.1 million leasehold dwellings in England
- Around 40% of new build property in England is leasehold
- Estimated around a maximum of 1,500 leasehold managing agents



# Main types of issues raised by leaseholders

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- Service charges
  - Application to FTT(PC)
  - Lease extension
  - Freehold purchase
  - Management
  - Other issues
    - Repairs, statutory consultation, breaches of covenant, interpreting leases and the RTM
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# Government's intention

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- Ensure all agents are required to belong to redress scheme that has been approved
  - Although Secretary of State may choose to set up a government administered scheme if approved schemes unable to offer a place to every agent
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# Definition - redress scheme

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- A scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person
  - Ombudsman
  - (Section 83(2) of the Enterprise and Regulatory Reform Act 2013)
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# Definitions - property management work

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- Things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where ...
- (Section 84(6) of the 2013 Act)



# Definitions - property management work

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- C wishes A to arrange
    - Services, repairs, maintenance, improvements or insurance or
    - To deal with any other aspect of the management of premises in England on C's behalf, and
    - The premises consist of or include a dwelling-house let under a relevant tenancy
  - (Section 84(6) of the 2013 Act)
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# What does property management work not include?

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- Things done by a person who is a social landlord for the purposes of Schedule 2 of the Housing Act 1996



# Social Landlord



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- Social Landlord:
    - Local housing authorities that are registered providers of social housing
    - Private registered providers of social housing

# Social Landlord

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- They must belong to:
- Housing Ombudsman Services <http://www.housing-ombudsman.org.uk/>

**Housing**  
Ombudsman Service

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# When would property management work arise?

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- Where landlord instructed agent to manage a house let to tenant in private rented sector
- Where agent managed block containing flats let under long lease or to assured or protected tenants



# Codes of Practice

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- Secretary of State has power under Section 87 of the 1993 Act to approve a code of management practice concerned with management of residential property by landlords and managing agents
  - Codes admissible as evidence in courts and tribunal and, where relevant, will be taken into account in proceedings
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# What are the current Codes of Practice?

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- The RICS “Rent Only Residential Management Code”
- The RICS “Service Charge Residential Management Code”
- The ARHM “Code of Management Practice for Private Retirement Housing”



# Complaints

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- Part 20 RICS Code
  - Internal complaints procedure
  - If not satisfied can then seek redress
  - Redress schemes have been created to provide a regulatory platform for leaseholders to address complaints
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# The order

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- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
  - 1 October 2014
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# The order

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- An Order to make it a legal requirement to belong to a scheme
  - Will set out any exemptions to the duty to belong to the scheme
  - DCLG intend that property management companies set up by and owned by freeholder and which only manage freeholder's property will be exempt
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# Three schemes

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The Property Ombudsman <http://www.tpos.co.uk>



*A free, fair and independent service for buyers, sellers, tenants and landlords of property in the UK.*

Ombudsman Services <http://ombudsman-services.org/property.html>



The Property Redress Scheme [www.theprs.co.uk](http://www.theprs.co.uk)



# The 2014 Order

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- Person who engages in property management work must be a member of an approved/designated redress scheme dealing with complaints in connection with that work

# Exemptions

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- Landlords – not explicitly excluded but are not generally covered by the definitions as they are not acting on instructions from another party
  - Local authorities
  - Right to Manage Companies
  - Those authorised/licenced to carry out regulated activities under the Legal Services Act 2007
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# The nature of redress



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- Require an apology
  - Issue a reprimand
  - Order compensation - the amounts payable are capped at £25,000. If an aggrieved party wishes to claim more they would need to apply to the courts; rather than the redress scheme.
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# The nature of redress

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- Fine a member
  - Expel a member - If a member is expelled then it is likely they would be refused access to membership of another scheme. If no scheme will accept them into membership they could not then legally operate.
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# Enforcement

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- Enforcing requirement to belong to a redress scheme
- Process for ensuring compliance
- Fair and effective penalty



# Who will enforce?

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- District Council
  - London Borough Council
  - Common Council of the City of London
  - Council of the Isles of Scilly
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# Penalties

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- Fine of up to £5,000
  - Where satisfied, on the balance of probability, that some one
    - Engaged in property management work and
    - Required to be a redress scheme member
    - Has not joined
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# Imposing a penalty

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- Authority gives written notice of their intention
  - Setting out
    - Reasons for penalty
    - Amount of penalty
  - Explaining 28 day period to make written representations/objections from date notice received

# Imposing a penalty

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- The written notice must be served within 6 months of the date on which the authority is in the position to issue the fine
  - After gathering enough evidence and satisfying any internal requirements that a fine is appropriate

# After the 28 day has passed...

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- Authority must decide whether to impose the fine, with or without modifications



# And if they decide to go ahead with a fine.....

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- Service of final notice which must include
  - Reasons for the fine
  - Amount to be paid
  - How payment may be made
  - Period to make payment
    - Not less than 28 days
  - Consequences of failing to pay
  - Right to appeal
  - Consequences of non-compliance with notice
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# Appeals against final notice

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- To the First-tier Tribunal (Property Chamber)



# Grounds of appeal

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- Error of fact
  - Wrong in law
  - Amount of fine unreasonable
  - Decision unreasonable for any other reason
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# Powers of the tribunal

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- Quash the final notice
  - Confirm the final notice
  - Vary the final notice
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# Recovery of fine

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- Need permission of the court
- Enforceable as a court order



# Recovery of fine

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- Authority's chief finance officer must sign **a certificate** stating that the amount due was not received by a date specified in the certificate
  - Conclusive evidence that the fine has not been paid
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# Withdrawing/amending notice

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- At any time authority may give written notice to
- Withdraw a notice of intent or final notice
- Reduce the amount of the fine in either notice

# And the future....

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- Review planned once approved schemes operating for about a year to ensure working as envisaged
  - Provides time for Secretary of State to request changes to how schemes are operating, if that is deemed necessary
  - Currently anticipated that first review will be conducted around the autumn of 2015
    - Review may be conducted earlier if Secretary of State considers it appropriate to do so
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# Any Queries?

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The Leasehold Advisory Service

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