

Byelaws of



Byelaw 4 (Handling Complaints, Allegations against Member Firms)

COMPLAINTS

General

4.1

- a) For the purposes of these Byelaws, an allegation of a (potential) complaint, infringement or breach (or similar contravention) of these Byelaws may, at the sole discretion of the Association, be considered no matter how or in what circumstances it may come to the attention of the Association.

- b) For the purposes of this Byelaw, “adjudicator” or “appointee” may refer to any person or employee of any firm or company or organisation duly authorised or appointed or recognised by the Association. (For example: an Ombudsman, Arbitrator, Independent Case Examiner, Mediator, Expert Adjudicator, Loss Adjuster etc etc.)

- c) For the avoidance of doubt, breaches of and/or non-compliance with Byelaw 3 will normally be assessed and evaluated by the Association itself in co-operation, as necessary, with suitable specialist advisers.

4.2

The Association reserves the right, where it considers it appropriate, to instigate an evaluation, or assessment of a complaint or alleged breach or infringement whether or not the Member Firm’s in-house complaints process has been completed.

Referral of a complaint or dispute to another body or by means of another method

4.3

- a) Where a Member Firm’s membership of another body or organisation provides for a requirement or facility considered more appropriate in the circumstances, the Association or its appointee or adjudicator may refer or recommend the complainant, or dispute, to that body or organisation’s procedures.

- b) Where the Association, or its appointee or adjudicator recommend that a complaint or dispute is more appropriately handled by way of an alternative dispute resolution process, such as mediation or arbitration, the Member Firm are expected to comply with that recommendation.

The Association may consult with, and exchange information with, any other Professional or Regulatory body, relevant to the industry of which the Member Firm is also a member.

- c) The Property Ombudsman TPO and Ombudsman Services: Property.

With effect from 1st June 2006, until this amendment is revoked by a further resolution of the National Council, the Association recognise The Property Ombudsman (TPO) under 4.1(b) of these byelaws and acknowledges the arrangement for handling complaints and providing independent redress associated with those complaints where the ARLA member firm is also a member of the National Association of Estate Agents (NAEA).



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- d) Notification to ARLA, by a member firm, of a referral to TPO Ltd

Where the consideration of a complaint about a joint ARLA/NAEA member is instigated by TPO Ltd it is a requirement upon the ARLA firm to inform the Association in writing (letter, fax or email), within seven working days, of that referral and such notification must include the name of the complainant and the address of any property to which the complaint refers.

- e) Provision of report outcome to ARLA following TPO Ltd adjudication

Within seven working days following the completion and receipt from TPO Ltd of the outcome of the investigation of a complaint the ARLA member firm must promptly forward to the Association a full hard copy of the adjudication/report including details of any Award of compensation made by TPO Ltd.

For the avoidance of doubt, the outcome of any such referral to TPO is to be considered and treated by both the member and the Association as if it was a complaint direct to ARLA under these byelaws.

[For the avoidance of doubt the above clauses do not relate to complaints about ARLA member firms Estate Agency activities as defined under the 1979 Estate Agents Act.]

Publication of complaint outcomes

4.4

The Association reserves the right to make public or publish from time to time a summary of complaints received and the outcomes.

Co-operation and the timely provision of information 4.5

- a) A Member Firm must co-operate fully with the Association's staff and/or any appointee or adjudicator acting for the Association who are involved in collecting or collating information or documentation relating to a complaint or allegation and, subsequently, in the assessing and/or evaluation.
- b) A Member Firm must make, upon reasonable request from the Association or its appointee or adjudicator, a relevant member of staff available for interview and/or discussion of a complaint.

For the avoidance of doubt, failure to comply or co-operate with the process or timescales of any investigation, assessment, evaluation or adjudication will be considered as a serious breach of these Byelaws.

Member Firm's internal complaints' scheme – access for clients/consumers 4.6

Each full Member Firm must have and operate an internal (in-house) formal Complaint Scheme or Procedure, proportionate to the size and structure of the Member Firm, for dealing with (external) formal written complaints and/or disputes from a client, customer, consumer or other person to whom the Firm owes a duty of care in the normal course of their activities as a Residential Letting and Management Agent.



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Member Firm's internal complaints' scheme – suggested format and content 4.7

Written details of such a scheme or procedure should be promptly made available to any client or other relevant person, upon request, and should as a minimum include: -

- a) The Name, Position or Title and contact details of the person to whom such a written complaint can be addressed.
- b) Notification of both the normal timescale for acknowledgement of the complaint and, the intended timescale within which an internal assessment will endeavour to be completed.
- c) Provision, where practicable, of at least one further point of referral within the Member Firm to whom the complainant can appeal for a supplementary review if they remain dissatisfied with the result of the original internal assessment carried out by (a) above.
- d) Reference to the right of the complainant, where the Member Firm's internal procedure has been exhausted and they remain dissatisfied, to apply to the Association (ARLA) for an independent re-evaluation.

An example template of such a scheme or procedure is provided at Appendix C for the use of Member Firms.

4.8

A Member Firm must provide to the Association or its appointee or adjudicator a copy of such an in-house scheme, as mentioned in 4.6 and 4.7 above, and the Member Firm shall do so within a maximum of 10 working days of written request.

ARLA – General procedures for Complaints

Basis for assessments/adjudications

4.9

Decisions, evaluations or assessments by the Association or its appointee or adjudicator shall be taken on admissions, factual evidence and/or what is considered, on balance, fair in the particular circumstances taking account of the respective positions of the parties.

4.10

Where an investigation or assessment is instigated, for whatever reason, against a Member Firm, this will be considered against the following: -

- a) The Association's Byelaws (including any relevant annexed Appendices or Schedules),
- b) Any relevant statutory approved codes,
- c) Applicable legislation,
- d) Taking account of lawful and/or contractual obligations and/or responsibilities set out in pertinent documents, such as Terms of Business, Tenancy Agreement etc.

4.11

Although it is for each practitioner (Member Firm) to decide on the appropriate procedure to be followed in any particular circumstance in providing its letting and/or management services, a Member Firm would be expected to justify such departures from 4.10 (a), (b), (c) and (d) in the light of any complaint or allegation of infringement or other similar breach.

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ng that this procedure may vary from time to time [see 4.1 and 4.2] being dependent upon the circumstances, particularly where a breach of Byelaw 3 is involved) for a referral of a complaint, alleged breach or infringement about a Member Firm, shall be as set out in this Byelaw but may be varied or amended or altered on a case-by-case basis, as required.

4.13

Upon receipt of a formal written complaint and/or allegation or information about an alleged or suspected contravention of one or more of those items listed in 4.10, the Association (or its appointee or adjudicator) will initially consider whether there seem sufficient reasons to proceed and whether the allegation (or parts thereof) come within its terms of reference.

4.14

Where there seem sufficient reasons to proceed and that the issues fall within the Association's terms of reference, the Member Firm will be notified in writing of the allegations and be asked: -

- (a) To confirm that the matter has been considered through, and has completed, the Firm's in-house complaints' procedure and whether the Firm's PI (Professional Indemnity) Insurers (or legal advisers have been notified of a potential claim;
- (b) To provide a detailed response to the Association (or its appointee or adjudicator) within 10 working days; such a response should set out, in relation to each and any specific allegation,
 - (i) Whether or not the Member Firm accepts and/or admits the infringement either in part or as a whole.
 - (ii) Where an allegation is denied (either in part or as a whole), to provide all relevant evidence (documents, copy correspondence etc or otherwise), to which they wish to refer as support of their rebuttal. Such evidence must be provided in a logical sequence and annotated or cross-referenced appropriately for ease of reference.
 - (iii) What, if any, compensation, reparation or reimbursement or other actions the Firm either have made or offered, or are prepared to make or offer, in respect of any or all of the allegations.
- (c) To submit any other comment or information or explanation or extenuating circumstances pertinent to the matters in question.

Provision of relevant information

4.15

It should be noted that, whilst the Association or its appointee or adjudicator may ask for further clarification or additional information (from any party) during the course of an evaluation, their conclusions will ultimately be based upon evidence or information they have before them. Neither the Association, the appointee or adjudicator is obliged, nor expected, to actively seek out such evidence or information. It is therefore incumbent upon a Member Firm to be proactive in ensuring that all, but only, relevant and material information, copy documentation, correspondence, file notes etc is provided to the Association or its appointee or adjudicator in a timely manner.

NOTE: A failure to provide relevant information or to comply with required timescales will not prevent the commencement of the adjudication.



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Timescale for determining the outcome of a complaint 4.16

Subject to any delays reasonably caused by the requirement for further information or clarification to be provided during the consideration of a complaint (or any other relevant extenuating circumstances), the appointee or adjudicator will endeavour to provide the outcome report of the evaluation to the Association within a maximum of 30 working days from the date of receipt, from the appropriate parties, of all requisite initial information.

Format of the outcome/report of an adjudication 4.17

The report of the appointee or adjudicator will, where appropriate, contain any recommendations to, or requirements of, the Member Firm taking account of issues identified during the evaluation and the consequent conclusions. (*NB. Examples of types of these recommendations are outlined in Appendix E to these Byelaws.*) It may also include (or by side letter) recommendations for action(s) to be taken, or further comments to be considered, by the Association.

Provision of the outcome/report to the Member Firm and/or complainant 4.18

The Association will provide in writing, as soon as is administratively practicable after receipt, a copy of the outcome/report of an evaluation or assessment of an allegation or complaint of a breach, infringement (or similar contravention) to the Member Firm and, where appropriate and relevant, to the original complainant.

Absence of provision to dispute the outcome/report 4.19

There is no facility, via the Association's procedures, for either the Member Firm or complainant to contest or challenge the outcome, conclusions or recommendations of the report provided by the appointee or adjudicator other than if;

- (a) there is clear evidence of an important error of interpretation or construal on a point of law which might materially affect the outcome of the adjudication, or,
- (b) where there has been a significant failing by the appointee or adjudicator in the methodology (procedures or parameters) set down for the consideration of a complaint, which might materially affect the outcome of the adjudication.

[This approach is similar in principle to that which exists in other areas where more formal arbitration or ombudsman schemes operate. This helps sustain the integrity of the complaints' scheme, avoids undermining the decisions of the appointee or adjudicator and allows the Association to demonstrate the transparency and independence of its complaints scheme.]

Response/action by the Member Firm following provision of the outcome/report 4.20

A Member Firm must, within 14 working days of the issue to it of the written outcome of a relevant report of an appointee or adjudicator, confirm in writing to the Association that the Member Firm either has complied, or will within a stated timescale undertake to comply with any recommendations made. The Association reserves the right to request suitable evidence that any such recommendations or undertakings have been fulfilled.

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Sanctions available to the Association

4.21

Where, based upon the outcome or deliberation of the conclusions and recommendations contained within any appointee's or adjudicator's report, (or any report or correspondence or form relating to compliance with Byelaw 3), the Association considers that a Member Firm has failed to act with reasonable competence in contravention of its obligations and responsibilities under the Association's Byelaws; the Association shall have power upon written notice to the Member Firm, to impose a sanction. (Such sanctions are outlined in Appendices E and F to these Byelaws and will be imposed in line with the policy set down in Byelaw 7)