

propertymark

DISCIPLINARY PROCEDURES

1. INTRODUCTION

- 1.1.** Propertymark is an umbrella organisation for a number of professional bodies, and these bodies are divisions of Propertymark. The divisions represent and regulate property professionals, e.g. estate and lettings agents. Individuals voluntarily join the divisions of Propertymark. For the purpose of these procedures members of Propertymark is intended to mean members of the divisions of Propertymark.
- 1.2.** Propertymark's regulatory function is principally undertaken in the public interest. But this function also helps protect the reputation of Propertymark and its wider members by maintaining and raising standards.
- 1.3.** Propertymark regulates by:
- Developing written standards of behaviour for individual members and enforcing compliance with these standards through disciplinary proceedings;
 - If the individual members is a Principal, Partner, or Director (PPD) of an agency then the PPD takes responsibility for:
 - (i) Any breach of the standards by other PPDs of their agency, or by their agency's staff (whether or not they belong to a division of Propertymark themselves);and
 - (ii) Making sure that their agency has consumer protection measures in place, such as valid and adequate insurance. Compliance with these requirements is enforced through the individual PPD's membership, i.e. individual membership can be terminated for non-compliance.
- 1.4.** Up to date information about divisions of Propertymark, and the standards which apply to members of the divisions, is available from the Propertymark website: www.propertymark.co.uk
- 1.5.** Anybody who feels that a member of Propertymark may have breached the standards should use and complete the member's internal complaints procedure – if the member has such a procedure and the complainant is eligible to use it. However, if this is not possible or unsuccessful and the matter is still unresolved, then it is possible to ask Propertymark to consider taking disciplinary action. Complainants are usually expected to make their complaint within six months of the matter of complaint. Any unreasonable delay may influence Propertymark's decision whether or not to take disciplinary action against the member.

- 1.6.** Anybody with sufficient evidence or information about a member can ask Propertymark to consider taking disciplinary action. Although Propertymark will consider complaints from members' client, complaints can also be made by non-clients, e.g. buyers and tenants. Complaints can also be made by other property professionals, whether or not they belong to Propertymark themselves. Although disciplinary action can lead to financial penalties, complainants do not receive financial compensation through Propertymark¹.
- 1.7.** Propertymark may refer cases to a Tribunal Panel without their being a complainant. These types of cases are likely to concern non-compliance with regulatory obligations, and the members' regulatory history will be taken into consideration both in deciding whether or not a case should be referred to a Tribunal Panel, and it terms of any eventual sanction imposed by a Tribunal Panel/Appeals Panel
- 1.8.** Not all disciplinary action requires a hearing. For example if a member admits they have breached the standard in writing to Propertymark, and they accept a proposed sanction, a hearing may be unnecessary. However, if a hearing is arranged all parties are **strongly advised** to attend, as this greatly assists those who decide the outcome of cases. If members initiate appeal it is particularly important they attend.
- 1.9.** These Procedures outline the three possible stages for disciplinary action:
- **Preliminary Stage**
This stage involves seeking the view of both side about the complaint that has been made, and in some cases will also involve Propertymark investigating the case by seeking information from third parties. This stage also involves a preliminary assessment, see 3.2 below;
 - **Tribunal Panel Hearings**
The preparations for hearing and how hearings are managed, i.e. what to expect on the day;
 - **Appeals Panel Hearings**
How members can appeal, and how appeals hearings are managed.

¹ Complainant who wish to receive financial compensation should make a complaint to any Ombudsman scheme or independent redress scheme to which the member belongs to, or take independent legal advice, as a first step. Propertymark may still take disciplinary action in these circumstances.

2. GLOSSARY

2.1. Tribunal Panels

Tribunal Panels comprise:

- Three people of which there will be at least one lay person and one property professional with experience of the relevant property discipline. One shall act as chair of the Tribunal.

2.2. Appeals Panels

Appeals Panels comprise:

- Three people of which there will be at least one lay person and one property professional with experience of the relevant property discipline. One shall act as chair of the Appeals Panel. No member of the original Tribunal Panel shall sit on the Appeal Panel.

2.3. Agency

A sole trader, partnership, limited liability partnership, limited company, PLC or any other form of legal entity whose main activity is real property.

2.4. Chief Executive of NAEA Propertymark/ ARLA Propertymark

The Chief executive of NAEA propertymark or ARLA Propertymark who can exceptionally alter the timeframe for cases and who may appoint nominees to fulfil any of the Propertymark staff roles referred to in these procedures.

2.5. Complainant

The person(s) who brings a complaint about a member

2.6. Days

Working days.

2.7. Designatory initials

Letters which individuals members may use to signal their status within their division of Propertymark.

2.8. Disciplinary Case Manager/ Caseworker

A member of Propertymark staff who is responsible for the investigation of complaints, and who can decide how disciplinary action will be dealt with during the preliminary stage, present cases against members at hearings, and administer disciplinary action until it is concluded.

2.9. Feedback Form

At the conclusion of the case complainants and members will be given an opportunity to provide feedback to Propertymark.

2.10. Head of Regulation

A member of Propertymark staff who is responsible for ensuring effective administration and investigation of complaints, and who can decide how disciplinary action will be dealt with during the preliminary stage, present cases against members at hearings, and administer disciplinary action until it is concluded, this may include pursuing unpaid financial sanctions. They may also attend hearings in order to ensure that the procedures are correctly followed, and to advise Tribunal Panels and Appeals Panels regarding these procedures on request.

2.11. Lay Persons

Lay persons who are not property professionals or ex property professional and therefore have never been members of any of the divisions of Propertymark. Lay persons have knowledge and experience of regulation and/or consumer protection issues. Lay persons are appointed annually but can apply to renew their panel status.

2.12. Member

A person who belongs to one or more divisions of Propertymark at the time of the alleged breach. This means that a member under investigation may not avoid sanction by terminating their membership.

2.13. Propertymark

Propertymark is an umbrella organisation for a number of professional bodies/self-regulatory organisations. At the time of the finalisation of this version of these procedures the divisions of Propertymark subject to these procedures were:

- National Association of Estate Agents (NAEA) including
 - NAEA Commercial (NAEA Comm)
- Association of Residential Letting Agents (ARLA) including
 - ARLA Inventories (ARLA Inv)
- National Association of Valuers and Auctioneers (NAVA)

2.14. Observers

Observers can attend Tribunal Panels or Appeals Panel hearing with the agreement of the Tribunal Panel or Appeals Panel, and the parties to the complaint

2.15. Ombudsman

An independent redress scheme appointed to consider complaints about property professionals

2.16. Parties

Complainants and members.

2.17. Principal, Partner or Director

Partners, sole practitioners, and directors of limited companies, are PPDs. In other situations Propertymark will consider the facts and circumstances of the case to establish whether a person is a PPD and not just the job title of the individual.

- 2.18. Property discipline**
Broad area of practice, e.g. sales, lettings, auctioneering, etc.
- 2.19. Property Professional**
Panel members who belong to at least one division of Propertymark. They are appointed annually but can apply to renew their panel status.
- 2.20. Reserved findings/sanctions**
Decisions on findings and/or sanctions may be reserved until a future identified time if a Tribunal Panel; or Appeals Panel cannot make their decisions on the hearing date.
- 2.21. Sanctions**
See www.propertymark.co.uk for the latest Sanctions Policy which applies to all Propertymark divisions. Sanctions imposed by Tribunal Panels or upheld by Appeals Panels apply to membership of all divisions, e.g. records of breaches shall be retained by all divisions, publicity arising from cases shall refer to all of the members divisions, and expulsion or suspension shall apply to all divisions.
- 2.22. Schedule of breaches**
Schedules list alleged breaches arising from complaints, including failure to co-operate with investigations, and refer to the most applicable standards². Therefore if the member belongs to more than one division the standards most applicable to the complaint will be used, e.g. if the member belongs to a number of divisions including ARLA and the complaint relates to residential lettings then the ARLA standards will be used.
- If Propertymark suspects members of additional breaches which have not been raised by the complainants these will appear on a separate Schedule which is not disclosed to the complainant, and which may be dealt with desperately.
- 2.23. Standards**
Written standards which apply to individual members of each division of Propertymark, e.g. Rules and Codes³. Further details are available from www.propertymark.co.uk
- 2.24. Written Decision**
Tribunal Panels and Appeals Panels provide written details of their decisions to members and complainants within set timeframes. This includes details of breaches proven or not proven, or appeals upheld or not upheld, as well as details of any sanction imposed on the member with the timeframe applied to the sanction. The Tribunal Panel or Appeals Panel may add a statement expressing their overall views on the case and will usually do so.

² Propertymark may alter the schedule of breaches during a hearing or immediately prior to the commencement of a hearing. In these circumstances consideration will be given as to whether there should be an adjournment.

³ Some Divisions have adopted codes produced by The Property Ombudsman Scheme.

3. PRELIMINARY STAGE

3.1. Correspondence

Information for complainants about how to lodge a complaint is available from www.propertymark.co.uk

As matters under consideration are personal obligations, Propertymark will only correspond directly with members or their legal representatives.

It is important that both parties present their written arguments clearly and fully, and provide all relevant information, during the preliminary stage. Members and complainants should remember that all parties, including any Tribunal Panel and/or Appeals Panel, will have sight of this correspondence. Complainants should use Propertymark's Complaint Form, and members should bear in mind that an effective way to present a case is to provide a summary with cross references to salient evidence or material in addition to their full written arguments.

Preliminary correspondence must be provided prior to hearing dates in accordance with the timetable provided below. The approach is intended to ensure certainty and transparency for both sides.

- Day 1:** Complaint Form and associated information and evidence received, which must include evidence that the member's internal complaints procedure has been used and completed, if applicable.
- Day 7:** This information is copied to the member and they must respond in writing to Propertymark within 21 days of the information being sent to them.
- Day 28:** Complainant provided with the member's response, if applicable.
- Day 130:** Propertymark completes its assessment of the case, see below.

Members should note that if they fail to provide a written explanation by Day 28 then they risk losing the opportunity to do so.

These timescales may be expedited if replies are received from complainants and/or members sooner, or they may be reasonably varied by the Head of Regulation in exceptional circumstances, e.g. ill health evidence by a medical note. The Head of Regulation may seek the views of the other party to the case before deciding whether or not to vary the timescale.

In circumstances where Propertymark direct a complainant to take their complaint to an ombudsman the timescales relating to any subsequent investigation by Propertymark commence upon the receipt of a copy of the Ombudsman's assessment. Complainants in receipt of an Ombudsman's final assessment wishing for Propertymark to investigate a complaint should contact Propertymark within six months of the date of the Ombudsman's assessment.

3.2. Assessment

- 3.2.1. The complaint will be assessed by Propertymark with the following alternative outcomes:
- (i) Case discontinued because the complainant has not used and completed the members' internal complaints process, or there is no case to answer, or insufficient evidence has been provided;
 - (ii) Propertymark uses its own powers to conclude the case; or
 - (iii) Formal disciplinary proceedings are brought against the member by Propertymark.
- 3.2.2. Propertymark may consider evidence sought from or provided by third parties when making its assessment, e.g. certificate of conviction, an assessment from an ombudsman or information from the Advertising Standards Authority. Propertymark may also use expert evidence to support cases against members. If disciplinary action is taken this evidence will be disclosed to the member and complainant and responses invited, prior to completion of the assessment.
- 3.2.3. If Propertymark decides to proceed with the case using (ii) it will provide a Schedule or Schedules of Breaches to the member and ask them to formally confirm whether they admit or deny breach(es) and as the same time the member will be presented with proposed sanction(s)⁴. If the member admits the breach(es) and accept the sanction(s) then a hearing, including the cost of a hearing, will usually be unnecessary. The complainant will be informed of the outcome and this will conclude the case.
- 3.2.4. However, in other circumstances a hearing will be necessary because:
- The member denies the breach(es); or
 - The member admits the breach(es) but disagrees with the proposed sanction(s); or
 - The matter is regarded as being more serious.

⁴ The sanction presented to the member at this stage is not binding on any future Tribunal Panel or Appeals Panel, although it may be taken into consideration in relation to any costs award made against the member. Similarly if a member denies a breach at this stage this won't necessarily preclude them from admitting the breach at a Tribunal Panel hearing.

3.3. Power to Suspend

- 3.3.1. The Head of Regulation may suspend members when this is necessary in the public interest, and the decision to suspend shall be made in consultation with a Director of the Propertymark Board. Before suspending a member the Chief Executive of NAEA Propertymark and/or ARLA Propertymark should ensure that reasonable steps have been taken to investigate the member's conduct and that there are sufficient grounds to suspend.
- 3.3.2. During the period of suspension the suspended member shall remain subject to standards which apply to his division(s). They may not, however, use their designatory initials, nor in any other way advertise their membership⁵, nor participate in Propertymark activities, including attendance at branch meetings or any other Propertymark or divisional event.
- 3.3.3. A suspended member shall not receive member benefits, and will not be liable for payment of their subscription for the period of suspension; however, they will be liable to pay any outstanding subscriptions upon the suspension being lifted, and be obliged throughout the period to supply regulatory information, i.e. Accountant's Reports.

4. TRIBUNAL PANEL HEARINGS

Hearings are held in private and are recorded⁶. All parties are **strongly advised** to attend hearings.

4.1. Administration

- 4.1.1. Tribunal Panels meet a number of times a year to hear cases. Members and complainants will be advised in writing no less than 28 days before the hearing date. A summary report, bundle of evidence, and guidance notes concerning the hearing, will be sent to all parties 14 days before the hearing.
- 4.1.2. At least seven days before the hearing all parties must advise Propertymark in writing of the individuals who will be attending, and Propertymark will let the other party and the Tribunal Panel known. Complainants and member may wish to use evidence supplied by witnesses, and in some cases member may wish to instruct expert witnesses.

⁵ With the exception of displaying the Propertymark CMP certificate.

⁶ Members may request full transcripts of hearings within seven days of the hearing. There is a charge for this service.

- 4.1.3. Especially if members wish to deny breach(es), they are **strongly advised** to attend their hearing. However, if any member cannot attend they may wish to provide the Tribunal Panel with a letter which outlines their case and mitigating circumstances, see 4.4 below. This should be supplied at least seven days before the hearing. Hearing may proceed without members and/or complainants unless otherwise agreed that the hearing should be re-scheduled.
- 4.1.4. It is also important that complainant attend, but if they cannot do so that can provide an impact statement to outline the effect of the breach(es) on them personally.

4.2. Disclosure

- 4.2.1. All correspondence outlined above will be disclosed to the Tribunal Panel prior to the hearing.
- 4.2.2. Although complainants and members may ask the Tribunal Panel to consider additional papers provided closure to the hearing date the Panel may not agree to this because of unfairness caused to the other party. This underlines the importance of members and complainants providing all relevant information to Propertymark in accordance with the applicable deadlines outlined above. The Panel reserves the right to refuse the introduction of evidence received outside of these deadlines at its absolute discretion.

4.3. Management

The Panel will decide the case on the basis of the disclosure provided if either or both parties choose not to attend.

The hearing follows a set procedure however the Tribunal Chair does have ability to vary the set procedures as they see fit providing that there is no unfairness to any of the parties.

4.4. Outcomes

- 4.4.1. The Panel may reserve their decision on findings and/or sanctions until a future specified time. Alternatively the Panel may find one or more of the scheduled breaches proven or not proven. If the member or their representative is present, he may then make any submission in mitigation, or if he is not present but has provided written mitigation then this will be passed to the Tribunal Panel. Mitigation is argument intended to keep any action imposed to a minimum. The complainants may also submit an impact statement. An impact statement is intended to allow complainants an opportunity to explain how the breach(es) have affected them personally.

- 4.4.2. The Panel shall then decide what sanction to impose in accordance with the Propertymark policy currently in force. The Panel has a range of sanctions at its disposal. See www.propertymark.co.uk for the latest Sanctions Policy. (See 5.1.2 below for the effect an appeal may have upon these sanctions.)
- 4.4.3. The Tribunal Panel shall take into consideration all relevant matter including the seriousness of the breach, length of membership, the member's compliance history, and the impact on the complainant.
- 4.4.4. If the member does not appeal then this will be the conclusion of the case.
- 4.4.5. The written decision detailing the outcome of the hearing is sent to the parties within 28 days, unless the Tribunal Panel states otherwise.

5. APPEALS HEARINGS

5.1. Administration

- 5.1.1. Members have 21 days from the date of posting of the written decision to lodge a Notice of Appeal with the Head of Regulation. The template Notice is available from www.propertymark.co.uk. However, if members request a transcript they may lodge a Notice within 14 days of the date of posting of the transcript (see footnote 5).
- 5.1.2. Notices require members to state the grounds and basis of their appeal, i.e. whether the member is appealing against findings, and/or sanctions. The current cost of lodging an appeal is included on the template Notice. This fee will be refunded in full if the appeal is successful or partially successful, but if the appeal is unsuccessful it will be forfeit to Propertymark. The member may also be liable for the costs of an appeal regardless of the outcome. Sanctions may increase as well as decrease as a result of appeals.
- 5.1.3. Appeals Panels meet a number of times a year to hear cases. Members and complainants will be advised in writing at least 28 days before the hearing date.
- 5.1.4. No one who sat on the original Tribunal Panel may sit on the Appeals Panel to consider the same case.

5.2. Disclosure

- 5.2.1. The Notice of Appeal will be sent to the complainant and Appeals Panel 28 days in advance of the appeals hearing.

- 5.2.2. All correspondence outlined above will be disclosed to the Appeals Panel prior to the hearing, including the Schedule or Schedules of breaches. The Appeals Panel will also receive a transcript of the original Tribunal Panel hearing.

5.3. Management

- 5.3.1. Although complainants and members may ask the Appeals Panel to consider additional papers provided closer to the hearing date, the Appeals Panel may not agree to this because of unfairness caused to the other party. This underlines the importance of members and complainants providing all relevant information to Propertymark in accordance with the applicable deadlines outlined above. The Appeals Panel reserves the right to refuse the introduction of evidence received outside of these deadlines at its absolute discretion.
- 5.3.2. Appeals hearings are not intended to simply repeat the original Tribunal's hearing, and therefore the Appeals Chair has the flexibility to manage the hearing in a manner they see fit, provided the member and complainant are provided with a reasonable opportunity to express their views. As regards appeals against findings, generally Appeal Panels will not consider new evidence unless the members could not reasonably have been expected to have provided the evidence to the original Tribunal. Members are **strongly advised** to attend appeals which they initiate, and the Notice requires members to confirm whether or not they will attend.

5.4. Outcomes

- 5.4.1. The Appeals Panel may or may not uphold the findings of the original Tribunal Panel, and /or uphold or change the sanctions imposed by the original Tribunal Panel. However, if there is an adjournment or judgment is reserved then clear timeframes will be set for concluding the case.
- 5.4.2. Those who attend appeals hearings may be immediately orally advised of the outcome, unless judgment is reserved or there is an adjournment. In any event the complainant and member will be advised in writing within 28 days, unless the Appeals Panel advises otherwise. Although any financial sanctions imposed by the original Tribunal Panel are suspended whilst any appeal is resolved, if an appeal is unsuccessful it becomes payable within 7 days of the date of the written decision.

6. COSTS

Members may be liable to reimburse PropertyMark for hearing costs. PropertyMark does not reimburse members their costs but the Tribunal Panel or Appeals Panel may reimburse complainants their costs.

7. PUBLICATION

The latest version of the PropertyMark's Publication Policy is accessible from www.propertymark.co.uk

8. FEEDBACK

When members and complainants are provided with written decisions they will be asked to provide their views on how the process has been managed.

9. REVIEW OF THESE PROCEDURES

These procedures shall be subject to a biennial review, and revised procedures will be published as appropriate.

