

SCHEDULES

SCHEDULE 6

ESTATE AGENTS' REDRESS SCHEMES

3 After Schedule 2 insert—

“SCHEDULE 3

Section 23A(10)

REDRESS SCHEMES

Approval of redress schemes

- 1 A redress scheme may be approved for the purposes of section 23A by the OFT acting in accordance with paragraphs 2 to 8.
- 2 (1) A scheme may not be approved unless the OFT considers that—
 - (a) the provisions of the scheme; and
 - (b) the manner in which it will be operated (so far as can be judged from facts known to the authority);are satisfactory for the purposes of section 23A.
- (2) Without prejudice to the generality of sub-paragraph (1), a scheme must not be approved unless the OFT considers that it makes satisfactory provision about—
 - (a) the complaints which may be made under the scheme (which may include complaints about non-compliance with the provisions of a code of practice or other document);
 - (b) the ombudsman's duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a particular complaint);
 - (c) the redress which the ombudsman may require members to provide to complainants, which must include the types of redress specified in sub-paragraph (3);
 - (d) the enforcement of any requirement to provide redress imposed on a member in accordance with the scheme.
- (3) The types of redress mentioned in sub-paragraph (2)(c) are—
 - (a) providing an apology or explanation;
 - (b) paying compensation; and
 - (c) taking such other actions in the interests of the complainant as the ombudsman may specify.
- 3 (1) In determining whether a scheme, or any provisions mentioned in paragraph 2(2), are satisfactory the OFT must have regard to—

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- (a) the interests of members of the scheme and of sellers and buyers of residential properties; and
 - (b) such principles as—
 - (i) in the opinion of the OFT constitute generally accepted principles of best practice in relation to consumer redress schemes, and
 - (ii) it is reasonable to regard as applicable to the scheme.
- (2) In considering the interests mentioned in sub-paragraph (1)(a), the OFT may have regard to the number of other redress schemes which are (or are likely to become) approved redress schemes.
- 4 The OFT must not approve a scheme unless it considers that the scheme makes satisfactory provision about the provision of information by the ombudsman or the scheme administrator to—
- (a) persons exercising functions under other approved schemes;
 - (b) persons exercising functions under other consumer redress schemes; and
 - (c) the OFT or any other person exercising regulatory functions in relation to the activities of persons engaging in estate agency work.
- 5 The OFT must not approve a scheme if it considers that the scheme provides for membership to be revoked on any unfair grounds.

Applications for approval to the OFT

- 6 An application for approval by the OFT of a redress scheme must—
- (a) be made in such manner as the OFT may determine; and
 - (b) be accompanied by such information as the OFT may require.
- 7 Where the OFT is proposing to refuse an application for approval it must give the applicant a notice stating—
- (a) that it is proposing to refuse the application;
 - (b) the grounds for the proposed refusal; and
 - (c) that representations about the proposed refusal may be made within such period of not less than 30 days as is specified in the notice.
- 8 If the OFT decides to refuse an application for approval, it must give the applicant a notice stating—
- (a) the OFT's decision to refuse the application; and
 - (b) the reasons for the decision.

Notification of changes to an approved scheme

- 9 The scheme administrator of a redress scheme which is approved by the OFT must notify the OFT of any change to the scheme before the end of the period of 14 days beginning with the day on which the change is made.

Withdrawal of approval by the OFT

- 10 The OFT may withdraw approval of a redress scheme which is for the time being approved by it.
- 11 Before withdrawing approval of a scheme, the OFT must give the scheme administrator a notice stating—
- (a) that it proposes to withdraw its approval;
 - (b) the grounds for the proposed withdrawal of approval; and
 - (c) that representations about the proposed withdrawal may be made within such period of not less than 30 days as is specified in the notice.
- 12 The OFT must give the scheme administrator a notice stating—
- (a) its decision on a proposal to withdraw approval; and
 - (b) the reasons for its decision.
- 13 If the OFT decides to withdraw approval of a scheme—
- (a) the withdrawal has effect from such date as may be specified in the notice under paragraph 12;
 - (b) the scheme administrator must give a copy of the notice under paragraph 12 to every member of the scheme.

Revocation of designation by the Secretary of State

- 14 If the Secretary of State decides to revoke his designation of a scheme for the purposes of section 23A, he must give every member of the scheme a notice stating—
- (a) that he has decided to revoke the designation;
 - (b) the reasons for his decision; and
 - (c) the date from which the revocation has effect.

Defamation proceedings

- 15 For the purposes of the law relating to defamation, proceedings under an approved redress scheme in relation to the investigation and determination of a complaint are to be treated in the same way as proceedings before a court.

Interpretation

- 16 In this Schedule—
- “redress scheme” has the meaning given in section 23A(8)(a);
 - “approved redress scheme” has the meaning given in section 23A(8)(b);
 - “buyer”, in relation to residential property, has the meaning given in section 23A(8)(e);
 - “complaint” has the meaning given in section 23A(8)(c);
 - “ombudsman” means the independent person mentioned in section 23A(8)(a);
 - “residential property” has the meaning given in section 23C;

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“scheme administrator”, in relation to a redress scheme, means the person who administers the scheme;

“seller”, in relation to residential property, has the meaning given by section 23A(8)(d).”