

## **National Federation of Property Professionals**

### **Disciplinary Procedures**

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These procedures were agreed by the NFOPP Board on 27 April 2010, and came into force with immediate effect for breaches occurring after this date.

## 1. Introduction

1.1 The National Federation of Property Professionals (NFOPP) is an umbrella organisation for a number of professional bodies, and these bodies are divisions of NFOPP. The divisions represent and regulate property professionals, e.g. estate and lettings agents. Individuals voluntarily join the divisions of NFOPP. For the purposes of these procedures members of NFOPP is intended to mean members of the divisions of NFOPP.

1.2 NFOPP's regulatory function is principally undertaken in the public interest, but this function also helps protect the reputation of NFOPP and its wider membership by maintaining and raising standards.

1.3 NFOPP regulates by:

- Developing written standards of behaviour for individual members and enforcing compliance with these standards through disciplinary proceedings;
- If the individual member 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 NFOPP themselves);

and

- (ii) Making sure that their agency has consumer protections 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 NFOPP, and the standards which apply to members of the divisions, is available from NFOPP's web site: [www.nfopp.co.uk](http://www.nfopp.co.uk).

1.5 Anybody who feels that a member of NFOPP 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 NFOPP to consider taking disciplinary action. Complainants are usually expected to make their complaints within six months of the matter of complaint. Any unreasonable delay may influence NFOPP'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 NFOPP to consider taking disciplinary action. Although NFOPP will consider complaints from members' clients, 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 NFOPP themselves. Although disciplinary action can lead to financial penalties, complainants do not receive financial compensation through NFOPP<sup>1</sup>.

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<sup>1</sup> Complainants who wish to receive financial compensation should make a complaint to any Ombudsman scheme to which the member belongs to, or take independent legal advice, as a first step. NFOPP may still take disciplinary action in these circumstances.

1.7 Not all disciplinary action requires a hearing. For example if a member admits they have breached the standard in writing to NFOPP, and they accept a proposed sanction, a hearing may be unnecessary.

1.8 These procedures outline the three possible stages for disciplinary action:

- Preliminary Stage  
This stage involves seeking the views of both sides about the complaint that has been made, and in some cases will also involve NFOPP investigating the case by seeking information from third parties. This stage also involves a preliminary assessment, see 3.2 below;
- Tribunal Hearings  
The preparations for hearings and how hearings are managed, i.e. what to expect on the day;
- Appeals Tribunal Hearings  
How members can appeal, and how appeals hearings are managed.

1.9 Although the majority of disciplinary action brought by NFOPP arises from complaints, NFOPP can also take action because adverse information has been received from organisations such as the Ombudsmen or the Office of Fair Trading.

## 2. Glossary

*Where appropriate the male gender shall include the female.*

### 2.1 Tribunal Panel

- **Property Professionals**

NFOPP members who belong to at least one division of NFOPP. They are appointed annually but can apply to renew their panel status.

- **Lay Members**

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

#### **Tribunal**

Tribunals are selected from the Tribunal Panel, and comprise:

- Two property professionals. One shall act as chairman of the Tribunal, and one shall have experience of the relevant property discipline.
- One lay member.

### 2.2 Appeals Tribunal Panel

- **Property Professionals**

NFOPP members who belong to at least one division of NFOPP. They are appointed annually but can apply to renew their panel status.

- **Lay members**

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

#### **Appeals Tribunal**

Appeals Tribunals are selected from the Appeals Panel, and comprise:

- Two property professionals. One shall act as chairman of the Appeals Tribunal, and one shall have experience of the relevant property discipline.
- One lay member.

### **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 Chairman**

Chairman of the NFOPP group who has a role in relation to suspensions.

### **2.5 Chief Executive Officer**

CEO of NFOPP who can exceptionally alter the timeframe for cases, suspend members, and who may appoint nominees to fulfil any of the NFOPP staff roles referred to in these procedures.

### **2.6 Complainant**

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

### **2.7 Days**

Working days.

### **2.8 Designatory initials**

Letters which individual members may use to signal their status within their division of NFOPP.

### **2.9 Disciplinary Caseworker**

A member of NFOPP 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, This may include pursuing unpaid financial sanctions.

### **2.10 Feedback form**

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

### **2.11 Head of Compliance**

A member of NFOPP 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 Tribunals and Appeals Tribunals regarding these procedures on request.

## **2.12 Head of Legal and Policy**

An NFOPP staff member whose role is to oversee the NFOPP's regulatory function, and attend hearings in order to ensure that the procedures are correctly followed and to advise Tribunals and Appeals Tribunals regarding the procedures on request. The Head of Legal and Policy also provides legal advice to NFOPP and to Tribunals and Appeals Tribunals, but not to complainants or members.

## **2.13 Licence**

Agencies' offices are licenced if the agency has a PPD in membership and an individual member of NFOPP works in the office.

## **2.14 Member**

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

## **2.15 NFOPP**

National Federation of Property Professionals is an umbrella organisation for a number of trade bodies /self regulatory organisations. At the time of the finalisation of these procedures NFOPP's divisions were:

- National Association of Estate Agents (NAEA)
- Association of Residential Lettings Agents (ARLA)
- Institution of Commercial and Business Agents (ICBA)
- National Association of Valuers and Auctioneers (NAVA).

## **2.16 Observer**

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

## **2.17 Parties**

Complainants and members.

## **2.18 Principal, Partner, Director**

Partners, sole practitioners , and directors of limited companies, are PPDs . In other situations NFOPP 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.

## **2.19 Property discipline**

Broad area of practice, e.g. sales, lettings, auctioneering, etc.

## **2.20 Reserved judgement**

Judgement may be reserved until a future identified time if a Tribunal or Appeals Tribunal cannot make their decision on the hearing date.

## **2.21 Sanctions**

See [www.nfopp.co.uk](http://www.nfopp.co.uk) for the latest sanctions policy which applies to all NFOPP divisions.

Sanctions imposed by NFOPP Tribunals, or upheld by NFOPP Appeals Tribunals, 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 standards. 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 NFOPP suspects members of additional breaches which have not been raised by the complainant then these will appear on a separate Schedule which is not disclosed to the complainant, and which may be dealt with separately.

## **2.23 Standards**

Written standards which apply to individual members of each division of the NFOPP , e.g. Rules and Codes<sup>2</sup>. Further details available from [www.nfopp.co.uk](http://www.nfopp.co.uk).

## **2.24 Written decision**

Tribunals and Appeals Tribunals 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 details of any sanction imposed on the member with the timeframe applied to the sanction. The Tribunal or Appeals Tribunal may add a statement expressing their overall views on the case.

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<sup>2</sup> Some divisions have adopted Codes produced by The Property Ombudsman.

### 3. Preliminary Stage

#### 3.1 Correspondence

Information for complainants about how to lodge a complaint is available from [www.nfopp.co.uk](http://www.nfopp.co.uk).

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 and/or Appeals Tribunal, will have sight of this correspondence. Complainants should use NFOPP's complaint form, and members should bear in mind that an effective way to present cases is to provide a summary with cross references to salient evidence or material in addition of 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 members 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 NFOPP within 14 days of the information being sent to them.
Day 28	Complainant provided with members explanation.
Day 88	NFOPP completes its assessment of the case, see below.

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

#### 3.2 Assessment

3.2.1 The complaint will be assessed by NFOPP with the following alternative outcomes:

- (i) Case discontinued because the complainant hasn't used and completed the members internal complaints process, or there is no case to answer, or insufficient evidence has been provided;
- (ii) NFOPP uses its own powers to conclude the case; or
- (iii) Formal disciplinary proceedings are brought against the member by NFOPP.

3.2.2 NFOPP may consider evidence sought from or provided by third parties when making its assessment, e.g. certificate of conviction, or information from the Advertising

Standards Agency. NFOPP 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 NFOPP 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 at the same time the member will be presented with proposed sanction(s)<sup>3</sup>. If the member admits the breach(es) and accepts the sanction(s) then a hearing, including the costs 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 so serious that there should be a Tribunal hearing.

### **3.3 Power to Suspend**

3.3.1 The CEO may suspend members when this is necessary in the public interest, and the decision to suspend shall be made in consultation with the Chairman of the NFOPP Board. Before suspending a member the CEO should ensure that reasonable steps have been taken to investigate the member's conduct and that there are sufficient grounds to suspend. An individual's suspension may mean their agency's membership and license is also suspended.

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 membership, nor participate in NFOPP activities, including attendance at branch meetings or any other NFOPP 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.

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<sup>3</sup> The sanction presented to the member at this stage is not binding on any future Tribunal or Appeals Tribunal, 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 hearing.

## **4. Tribunal Hearings**

Hearings are held in private and are recorded<sup>4</sup>.

### **4.1 Administration**

4.1.1 Tribunals 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.

4.1.2 At least 7 days before the hearing all parties must advise NFOPP in writing of the individuals who will be attending, and NFOPP will let the other party and the Tribunal know. Complainants and members may wish to use evidence supplied by witnesses, and in some cases members may wish to instruct expert witnesses.

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 with a letter which outlines their case and mitigating circumstances, see Outcomes below. This should be supplied at least 7 days before the hearing.

4.1.4 It is also important that complainants attend, but if they cannot do so they can provide an impact statement to outline the effect of the breaches on them personally.

### **4.2 Disclosure**

4.2.1 All correspondence outlined above will be disclosed to the Tribunal prior to the hearing. The Tribunal and complainant will also be provided with the Schedule or Schedules of breaches, but in circumstances where NFOPP has proposed a sanction this will not be disclosed to the complainant or Tribunal, unless the Tribunal wishes to consider making a costs award against the member at the conclusion of the hearing.

4.2.2. Although complainants and members may ask the Tribunal to consider additional papers provided closer to the hearing date the Tribunal 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 the NFOPP in accordance with the applicable deadlines outlined above. The Tribunal reserves the right to refuse the introduction of evidence received outside of these deadlines at its absolute discretion.

### **4.3 Management**

Information about how Tribunal hearings are managed is provided at Annex A. This presumes that both parties will attend the hearing, but the Tribunal will decide the case on the basis of the disclosure provided if either or both parties choose not to attend.

### **4.4 Outcomes**

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<sup>4</sup>Members may request full transcripts of hearings within 7 days of the hearing. There is a charge for this service.

4.4.1 The Tribunal 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. Mitigation is argument intended to keep any sanction imposed to a minimum. The complainant may also submit an impact statement. An impact statement is intended to allow complainants an opportunity to explain how the breaches have affected them personally.

4.4.2 The Tribunal shall then decide what sanction to impose in accordance with the NFOPP's policy currently in force. The Tribunal has a range of sanctions at its disposal. See [www.nfopp.co.uk](http://www.nfopp.co.uk) for the latest sanctions policy. (See 5 below for the effect an appeal may have upon these sanctions).

4.4.3 The Tribunal shall take into consideration all relevant matters including the seriousness of the breach, length of membership, the member's compliance history, and the impact on the complainant. If judgement is reserved then clear timeframes will be set for concluding the case.

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 states otherwise.

## **5. Appeals Tribunal 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 Compliance or Head of Legal and Policy. The template Notice is available from [www.nfopp.co.uk](http://www.nfopp.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 4).

5.1.2 Notices require members to state the grounds and basis of their appeal, i.e. whether the member is appealing against breaches proven, 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 the NFOPP. The member may also be liable for the costs of an appeal regardless of the outcome.

5.1.3 Appeals Tribunals 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.

### **5.2 Disclosure**

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

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

### **5.3 Management**

5.3.1 Although complainants and members may ask the Appeals Tribunal to consider additional papers provided closer to the hearing date the Appeals Tribunal 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 the NFOPP in accordance with the applicable deadlines outlined above. The Appeals Tribunal reserves the right to refuse the introduction of evidence received outside of these deadlines at its absolute discretion

5.3.2 Appeals hearings aren't intended to simply repeat the original Tribunal's hearing, and therefore the Appeals Chairman 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.

#### **5.4 Outcomes**

5.4.1 The Appeals Tribunal may or may not uphold the findings of the original Tribunal, and /or uphold or change the sanctions imposed by the original Tribunal. However, if there is an adjournment or judgement 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 judgement 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 Tribunal advises otherwise. Although any financial sanctions imposed by the original tribunal are suspended whilst any appeal is resolved, if an appeal is unsuccessful it becomes payable with 7 days of the date of the written decision.

#### **6. Costs**

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

#### **7. Publication**

The latest version of the NFOPP's publicity policy is accessible from the [www.nfopp.co.uk](http://www.nfopp.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 bi- annual review, and revised procedures will be published as appropriate.