

Code of Conduct and Best Practice Guide on “Complaint Handling Mechanism of Property Management Companies”

FAQs

These FAQs are for general reference only, the answers / solutions suggested in the FAQs are not exhaustive and do not constitute legal or professional advice. In considering whether a licensee has committed a disciplinary offence, the PMSA will determine each case on its own facts. Legal or professional advice should be sought as and when necessary on the interpretation of the relevant legal provisions and in respect of any individual case. The PMSA will not accept any liability or responsibility whatsoever for any loss or damage caused to any person howsoever arising from any use, misuse of, or reliance on the contents of these FAQs.

1. What is a code of conduct?

Answer: A code of conduct contains practical guidance for the purposes of section 4 of the Property Management Services Ordinance (“PMSO”) (disciplinary offences) and is issued by the PMSA under section 5 of the PMSO.

2. What is a best practice guide?

Answer: A best practice guide is issued by the PMSA under section 44 of the PMSO for the purpose of enabling licensees to comply more effectively and professionally with the guidelines set out in the code of conduct.

3. What are the consequences of failing to comply with the code of conduct or the best practice guide?

Answer: Under section 5 of the PMSO, a licensee does not incur a legal liability only because the licensee has contravened a provision of the code of conduct. However, the code of conduct is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the code of conduct may be relied on as tending to establish or negate a matter that is in issue in the hearings. Failure to comply with the best practice guide will not be regarded as a disciplinary offence referred to in section 4 of the PMSO, however, licensees are encouraged to use their best endeavours to follow the best practice guide.

4. The Best Practice Guide (Guide No. G2/2021) (“Guide”) suggests that a licensed property management company (“PMC”) should display a notice containing details of the complaint handling mechanism (“mechanism”) in a prominent place at every building in the property. If a property is composed of detached houses, where should the notice be displayed?

Answer: The Code of Conduct (Code No. C2/2021) (“Code”) requires a licensed PMC to display the notice in a prominent place in a property and the Guide suggests that the licensed PMC should, so far as reasonably practicable, display the notice in a prominent place at every building in the property. If a property is composed of detached houses, the licensed PMC may display the notice in a prominent place of the property (e.g. management office or the usual place for displaying notices for communication purposes with clients) instead of a prominent place of every detached house.

5. What does “client” mean in the Code and the Guide?

Answer: The term “client” has the same meaning as defined in section 16 of the PMSO, i.e. *“in relation to a property for which a licensed PMC provides property management services, means— (a) the owners’ organization of the property; and (b) the owners of the property who pay or are liable to pay the management expenses in respect of the services”*.

6. What does a “complaint” mean in the Code and the Guide?

Answer: The definition of a complaint is very broad. A complaint may be lodged by a named or an anonymous person and such a person includes a client, user or visitor of the relevant property. A complaint may be lodged through different ways, including those made verbally, by telephone, fax or email, etc. A licensed PMC is not required to follow the Code or the Guide if it reasonably believes that a person has only made an enquiry or provided opinion or information, but has not lodged a complaint.

7. What is the difference in handling a complaint from a client and a non-client (e.g. a tenant or visitor)?

Answer: A licensed PMC has to provide a copy of the details of the complaint handling mechanism to a client upon request. In addition, a licensed PMC

has to acknowledge receipt of a complaint made by a client, provide the case number to the client and notify the client of the progress and result of the complaint. Although a licensed PMC is not required to follow the relevant guidelines when handling a complaint made by a non-client, it should still handle the complaint fairly and impartially.

8. What is an anonymous complaint?

Answer: If a complainant fails to provide information about his/her identity or a licensed PMC reasonably believes that the identity of a complainant cannot be ascertained through the information the complainant has provided, the licensed PMC may regard the complaint as an anonymous one.

9. How does a licensed PMC handle an anonymous complaint?

Answer: A licensed PMC may not deal with an anonymous complaint, but it is still required to record such a complaint in the complaint register. Should a licensed PMC choose to handle an anonymous complaint, it is not required to acknowledge the receipt of the complaint, provide the case number to the complainant or notify the complainant of the progress and result of the complaint.

10. If a complainant lodged a complaint verbally or over the telephone and the licensed PMC also informed the complainant verbally or by telephone of the progress or result of the complaint, is the licensed PMC still required to record the relevant matters?

Answer: Yes. According to the Code, a licensed PMC has to keep properly all relevant complaint information and documents for not less than 3 years commencing from the date of receipt of a complaint (no matter whether the complaint is established or not). The relevant information includes the records of oral or telephone communication with complainants.

11. Does the “person-in-charge” need to handle a complaint personally?

Answer: No. The Code only requires the person-in-charge to supervise the handling of complaint. The person-in-charge may arrange for other persons to handle the complaint.

12. If a person-in-charge is under a complaint or is involved in the relevant matter, is the person-in-charge still able to supervise the handling of the complaint?

Answer: If a person-in-charge is under a complaint or is involved in the relevant matter, the person-in-charge should not continue to supervise the handling of the complaint in order to avoid conflict of interest. In such a case, the licensed PMC should appoint another person-in-charge to supervise the handling of the complaint.

13. If a person-in-charge is involved in a complaint thus rendering him/her not appropriate to continue to supervise the complaint, is he/she still able to supervise the handling of other complaints?

Answer: Yes.