



Department for  
Communities and  
Local Government

# Protecting consumers in the letting and managing agent market

Call for Evidence



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# Contents

<b>Basic information</b>	<b>4</b>
<b>Introduction</b>	<b>7</b>
<b>Chapter 1: The case for change</b>	<b>10</b>
<b>Chapter 2: Minimum entry requirements and standards in order to operate as a managing or letting agent</b>	<b>16</b>
<b>Chapter 3: What regulatory approach and enforcement should be put in place?</b>	<b>22</b>
<b>Chapter 4: Empowering consumers through rights to choose and switch agents and to challenge service charges</b>	<b>25</b>
<b>Annex A: List of questions</b>	<b>28</b>

# Basic information

This call for evidence will last for 6 weeks from 18 October 2017 until 29 November 2017.

We encourage you to respond by completing an online survey at:  
[https://www.surveymonkey.co.uk/r/property\\_agents](https://www.surveymonkey.co.uk/r/property_agents)

Alternatively you can email your response to the questions in this call for evidence to: [LEASEHOLD.Reform@communities.gsi.gov.uk](mailto:LEASEHOLD.Reform@communities.gsi.gov.uk)

If you are responding by email or in writing please make it clear which questions you are responding to. When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address (if you have one), and
- a contact telephone number.

# Glossary of terms used in this document

**Freehold:** The freehold interest in land (sometimes referred to in legal terms as fee simple absolute in possession) is a title in property that can be held in England and Wales. In practice, a residential freehold interest applies to the outright ownership of land or property for an unlimited period and applies to the majority of houses. However, there may be legal and planning related restrictions on what a freeholder can do to modify their property and land. There is a distinction between a freehold interest in a real estate asset and freehold ownership of an asset. The former implies that there is a lease over the property and there being two interests in that land. The latter implies a single interest.

**Landlord:** The landlord is the person or organisation who owns the freehold (or superior leasehold interest) and may also be called the lessor or freeholder.

In the leasehold sector, the landlord retains ownership of the land on which the property is built. The landlord has a defined legal relationship with the leaseholder governed by the lease and relevant legislation. The landlord can be an individual person or a company, including a local authority or a housing association and can also be a Residents' Management Company named in a lease or a Right to Manage Company that has acquired the statutory right to take over the landlord's management functions.

**Lease:** A lease is a legally binding document, or contract, giving the leaseholder the exclusive possession of a property for a fixed period of time. The terms of the lease determine the rights and responsibilities of the landlord and leaseholder in respect of the property and cannot usually be changed without the agreement of all parties or an application to a tribunal or court for a variation.

**Leasehold:** A long leasehold is a form of property ownership normally used for flats that is simply a long tenancy, providing the right to occupation and use for a long period – the ‘term’ of the lease. This can be a period of over 21 years and the lease can be bought and sold during this term. The term is fixed at the beginning and decreases year by year, until the property returns to the landlord (although an assured tenancy would then become a possibility). Houses can also be leasehold.

**Leaseholder:** A person who buys a leasehold property on a lease.

**Letting agent:** A person or company who is engaged by a private landlord to let rented homes on their behalf. A letting agent may also perform management duties on behalf of a landlord.

**Managing agent:** A person or company appointed by the owner (or someone operating on their behalf) to manage that property, and their role may include, for instance repairs and maintenance. Managing agents operate in both the private rented sector and the leasehold sector.

**Property agent:** A generic term for both letting and managing agents.

**Tenant:** A person who occupies land or property rented from a landlord.

# Introduction

1. More and more people now rent their home or own leasehold properties. This has fuelled the growth of a multi-billion pound property agent market. The Competition and Markets Authority estimated that service charges alone could total between £2.5 and £3.5 billion per year.<sup>1</sup>
2. In return for these significant sums agents play an important role in protecting the value of peoples' most treasured asset, their property, and in ensuring that residents are safe and secure in their homes. Choosing the right agent is critical, and yet consumers are often disempowered in the process. Those paying and benefitting from the service often have no say as to who their agent is. A lack of transparency can allow unfair fees and costs to go unnoticed. Even in cases where consumers are really unhappy with their agent they could find it impossible to switch.
3. There is overwhelming evidence of the harm that some people experience, with claims that consumers could be overpaying for managing agents services by up to £1.4bn.<sup>2</sup> Generation Rent found that the average fee paid by two tenants to letting agents is £400 with costs ranging from £40 to £780.<sup>3</sup> Letting agents also have no contractual responsibilities to the tenant, despite the fact that they are the primary beneficiary of the service. Where property agents under-manage in order to squeeze costs, leaseholders and tenants can suffer due to late and poor quality repairs and services.
4. The structure of the leasehold system itself is partially to blame. The very nature of the agreement means that leaseholders are typically excluded

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<sup>1</sup> Competition and Markets Authority market study of Residential Property Management Services, 2014: [https://assets.publishing.service.gov.uk/media/547d99b8e5274a42900001e1/Property\\_management\\_market\\_study.pdf](https://assets.publishing.service.gov.uk/media/547d99b8e5274a42900001e1/Property_management_market_study.pdf)

<sup>2</sup> <http://www.thisismoney.co.uk/money/mortgageshome/article-2055707/Leaseholders-overcharged-700m-management-fees-according-Which.html> and <http://www.telegraph.co.uk/property/news/leaseholders-overcharged-14bn-says-mp/>

<sup>3</sup> 2016 National Approved Letting Scheme online survey on letting agent fees. Generation Rent's findings are at <http://lettingfees.co.uk/stats/>

from decisions on property management. Government has introduced a number of protections to address the imbalance of power in leasehold over time, but these are often inconsistent and complex and can be abused by those that they were meant to protect against. Rights to challenge service charges, or to take on management directly, can be undone in a tribunal system that is too daunting, costly and uncertain.

5. A lack of minimum standards has allowed unscrupulous agents to enter the market. Anyone can become a property agent regardless of their background, skills or experience. Many take a professional approach and sign up to standards of practice through membership of a trade body, but others do not. This creates an unlevel playing field
6. The Government is committed to ensuring that those living in the rented and leasehold sectors are protected from abuse and poor service. On 18<sup>th</sup> October 2017 Sajid Javid, the Secretary of State for Communities and Local Government, said “This is supposed to be the age of the empowered consumer – yet in property management, we’re still living in the past. I’ve already announced plans to regulate letting agents, including banning fees for tenants. I’ve also made clear that I want to see an end to unjustified use of leasehold in new-build houses. And today I’m setting out a plan to fix the problems in the property agent market.”
7. This call for evidence takes forward this ambition, seeking views on whether an overhaul of regulation in the property agent market is needed and the approaches Government could take. We are also considering measures which will empower leaseholders by making it easier for them to choose and switch agents, potentially reducing costs. The call for evidence will run until 29 November 2017. Government will bring forward detailed proposals early next year.
8. **Chapter 1 sets out the problems we are trying to solve and the case for change.** It considers the problems that leaseholders and tenants experience, including with fees and service charges, and considers the role that regulation of agents could play in responding to these.



9. **Chapter 2 seeks views on the minimum entry requirements and standards agents should meet** in order to operate – such as a fit and proper person test, qualifications, or membership of professional bodies, and rules of conduct.
10. **Chapter 3 considers the potential options for a new regulatory approach**, including the role of an independent regulator and approaches to enforcement.
11. **Chapter 4 considers how to empower consumers through providing greater choice and rights to switch agent** – including removing barriers to achieving Right to Manage status, and giving leaseholders a right to request that services are retendered.

# Chapter 1: The case for change

12. Property agents can play a significant role in managing day-to-day issues helping people to feel safe and happy in their homes. They can be responsible for a valuable asset, and can also play an important role in managing moves within the sector.
13. A growing number of people now have experience of using a property agent either as private tenants, leaseholders or freeholders on an estate where an agent is employed to manage the upkeep of communal ground. The private rented sector is now the second largest provider of homes in England, accounting for more than a fifth of all homes and over 4.5 million households.<sup>4</sup> 4.2 million homes are now owned as leasehold.<sup>5</sup>
14. Consumers often have very little control over the services they receive and limited ability to challenge agents when services are not of the quality that they expect or deserve. Tenants and leaseholders can be exploited and subject to exorbitant charges.
15. There is appetite for greater regulation of property agents. 72 per cent of responses to the recent consultation on banning letting fees were in favour of wider regulation in the letting sector to improve standards and tackle rogue practices.<sup>6</sup>

## **What is a property agent?**

16. A property agent is an umbrella term for both letting and managing agents. In general terms a property agent supports a landlord to comply with their legal responsibilities ensuring that properties are professionally

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<sup>4</sup> English Housing Survey 2015-16: Headline Report.

<sup>5</sup> Dwelling Stock Estimates 2015

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/519475/Dwelling\\_Stock\\_Estimates\\_2015\\_England.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519475/Dwelling_Stock_Estimates_2015_England.pdf)

<sup>6</sup> *Internal DCLG figures within forthcoming consultation response*

managed, and may provide services directly to tenants and leaseholders on landlords' behalf.

17. A letting agent is a person or company who is engaged by a private landlord to let rented homes on their behalf.
18. Managing agents operate in both the private rented sector and the leasehold sector and is a person or company appointed by the owner (or someone operating on their behalf) to manage that property. A managing agent in the private rented sector is normally a letting agent appointed by the landlord to carry out the day to day management of the property on the landlord's behalf. Their role may include, for instance, repairs and maintenance and collecting rental payments.
19. Managing agents in the leasehold sector can be private companies, or housing associations managing residential blocks. In most cases a managing agent contracts with the freeholder to manage a property in accordance with the terms of the lease and statutory requirements. However, some freeholders will also use managing agents where they have common grounds.
20. We know that many private rented sector agents also operate as leasehold managing agents. There is considerable overlap between the leasehold and private rented sectors, with 43% of leasehold properties being in the private rented sector so it is likely that property agents will be providing both letting agents services and property management in the private rented and leasehold sectors.<sup>7</sup>
21. This call for evidence covers all managing and lettings services by property agents in the private rented and leasehold sectors.

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<sup>7</sup> Dwelling Stock Estimates 2015  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/519475/Dwelling\\_Stock\\_Estimates\\_2015\\_England.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519475/Dwelling_Stock_Estimates_2015_England.pdf)

## What action has already been taken?

22. Government has already acted to tackle unfair practices in the private renting and leasehold sectors. In 2014, the Government legislated to require all letting and managing agents to belong to a redress scheme to enable tenants and landlords to complain to an independent body and seek compensation where appropriate.
23. On 6 April 2017 the Government brought in a range of tougher measures to target rogue landlords and agents in the private rented sector, including civil penalties and an extension of rent repayment orders. Over this Parliament the Government will go further by introducing banning orders and a database of rogue landlords and agents, making it easier for local authorities to act against them. Government will also ban letting fees paid by tenants and use its powers in the Housing and Planning Act 2016 to require all letting and managing agents to be a member of a client money protection scheme.
24. On the 1<sup>st</sup> October 2017 Sajid Javid, Secretary of State for the Department for Communities and Local Government, announced important further actions to improve protection for tenants in the private rented and leasehold sectors, including:
  - taking forward the draft Bill to ban letting fees paid by tenants;
  - that all lettings agents will be regulated; and
  - that all landlords will have to be covered by a redress scheme.
25. Our consultation on *Tackling unfair practices in the leasehold market* sought views on a range of issues and also asked what further areas of leasehold reform should be prioritised. Over 6,000 responses have been received showing how important these issues are, and the Government will be issuing its response shortly.

## Why is more action needed?

26. While there are many good property agents, there are also signs that the market is not working for consumers. A survey conducted by Brady Solicitors, in conjunction with the Leasehold Advisory Service, found that 66% of leaseholders disagreed that the overall service provided by their managing agent was good. Less than a fifth (17%) of respondents either strongly or somewhat agreed that they received a good service.<sup>8</sup> The same survey found that 40% of leaseholders disagree that service charges represent value for money.<sup>9</sup>
27. Last year, the three property redress schemes, the Property Ombudsman, Ombudsman Services: Property and the Property Redress Scheme received over 20,000 enquiries and 5,000 complaints about property agents on a variety of issues including communication, property management, and agent handling of consumer complaints.<sup>10</sup>
28. At the heart of the problem, is the lack of power that leaseholders and tenants have to challenge poor services. A market study into Residential Property Management Services by the Office of Fair Trading (now the Competition and Markets Authority), found that leaseholders may have limited influence or effective control over the quality, price or service of a property management company appointed by the landlord, despite paying for the services provided by them.
29. Similarly, in the lettings sector, the agent is appointed by the landlord. As a result, tenants have very limited ability to negotiate or challenge the type and quality of agent services and can be subject to unfair or excessive fees.

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<sup>8</sup> <https://www.lease-advice.org/files/2016/07/Brady-Solicitors-in-partnership-with-LEASE-Leaseholder-Survey-June-16.pdf>

<sup>9</sup> <https://www.lease-advice.org/files/2016/07/Brady-Solicitors-in-partnership-with-LEASE-Leaseholder-Survey-June-16.pdf>

<sup>10</sup> In 2016 the Property Ombudsman received 14,218 enquiries and 3,553 complaints [https://www.tpos.co.uk/images/TPO\\_Annual\\_Report\\_2016\\_FINAL\\_WEB\\_LINKS.pdf](https://www.tpos.co.uk/images/TPO_Annual_Report_2016_FINAL_WEB_LINKS.pdf). Ombudsman Services: Property received 5,601 initial contacts and resolved 1,166 complaints <https://www.ombudsman-services.org/about-us/annual-reports>. The Property Redress Scheme received a total of 384 formal complaint notifications - <https://www.theprs.co.uk/Home/Index>.

30. It can be very difficult for those paying for services to assess whether they are receiving value for money. A landlord may have little oversight of the services being provided to a tenant. A lack of transparency on corporate links or affiliations between property managers and landlords or freeholders can erode trust and result in consumers paying higher fees. Where the management fee is a percentage of the service charge, agents may have an incentive to conduct unnecessary repairs making transparency all the more important.
31. Even where consumers are really unhappy with the service of their agent it can be very difficult, in some cases impossible, to switch. Agents can be written into the lease and hard to remove. Private tenants may find that they have little choice but to move home where they are unhappy with their agent.
32. While protections have been put in place to correct these imbalances of power, they can be inconsistent and lacking. The Right to Manage allows leaseholders to take control of management but not all leaseholders are eligible, and it can be difficult to achieve the necessary consent – particularly where leaseholders are not resident. Freeholders living on an estate currently have much more limited rights when it comes to challenging service charges or taking on management functions.
33. Redress can also be lacking. The tribunal system can be an expensive, uncertain, and intimidating process for leaseholders and tenants. Ombudsman schemes have provided a more accessible route to resolve complaints when problems arise. But leaseholders, landlords, and tenants tell us that there are more fundamental problems, particularly with those agents who do not choose to belong to a professional body.
34. None of these issues are helped by the lack of minimum entry requirements and standards for property agents. Anyone can set up as a letting or managing agent. Professional companies with well-qualified staff have to compete with those who provide a poor service, often for a lower price, while tenants and leaseholders have little assurance or say

over the quality or price of services received. The devolved regions have introduced mandatory licensing as a means to enforce better standards, including standards relating to fees and service charges.

35. We are seeking views through this call for evidence on whether a new regulatory model is needed for agents in the leasehold sector, in line with our commitment to regulate agents in the private rented sector. We want to understand what form that regulation should take to best protect and empower tenants and leaseholders.

## **Chapter 1 Questions**

***Q1.1 Do you agree with our analysis of the problems in the market set out in this chapter? What regulatory measures could better empower leaseholders to manage the quality and cost of the services they receive?***

***Q1.2 Is a new regulatory approach required for property management agents? If not, why not?***

***Q1.3 Aside from regulation, are there any alternative means the Government should consider for driving up standards and professionalism in the sector?***

***Q1.4 What should be the scope and objectives of any regulation? In particular:***

***Which agents and individuals working within managing agents should be covered? Should individuals, companies and officers be treated differently?***

***What types of services should be included? And should any types of companies or services be excluded?***

***Should any other classes of people or property professionals be covered by any regulator?***

## Chapter 2: Minimum entry requirements and standards in order to operate as a managing or letting agent

36. Currently, anyone can operate as a property agent in England without any qualifications or professional oversight. While many agents agree to meet standards of practice through membership of a trade body, others do not, and standards can differ between different trade and professional organisations. This differs to the approach taken in Scotland and Wales where regulation of property agents has been introduced.

### Voluntary Regulation through Professional Trade Associations

37. Trade associations operate under a self-regulation model. This means that their members are not regulated by Government but are internally monitored and inspected. Trade associations often require their members to operate a higher standard than that required by law.
38. The leading trade bodies in the lettings sector are ARLA Propertymark, the National Approved Lettings Scheme (NALS), the Royal Institution of Chartered Surveyors (RICS) and UK Association of Letting Agents (UKALA). ARLA Propertymark estimate that they have over 9,000 letting agents as members and NALS estimate that they have 1500 letting firms as members with over 2000 offices.<sup>11</sup>
39. Within the leasehold sector, the Association of Residential Managing Agents (ARMA) estimate that around half of the leasehold flats in England and Wales are provided by their members.<sup>12</sup> Other trade bodies for block managing agents include RICS and the Institute of Residential Property Management (IRPM). Professional bodies also

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<sup>11</sup> <http://www.arla.co.uk/media/1045913/response-on-banning-letting-agent-fees-arla-propertymark.pdf> and <http://www.nalscheme.co.uk/wp-content/uploads/2017/06/NALSCONrespfinal.pdf>

<sup>12</sup> Competition and Markets Authority market study of Residential Property Management Services, 2014: [https://assets.publishing.service.gov.uk/media/547d99b8e5274a42900001e1/Property\\_management\\_market\\_study.pdf](https://assets.publishing.service.gov.uk/media/547d99b8e5274a42900001e1/Property_management_market_study.pdf)



cover specialist parts of the market including the retirement market via the Association of Retirement Housing Managers (ARHM) and the Associated Retirement Community Operators.

40. Professional trade bodies have some common entry requirements including compliance with all relevant legal requirements, membership of a client money protection scheme and professional indemnity insurance. Some also require that agents have been operating for a minimum period of time and compliance with a code of practice. In addition to meeting a set of entry requirements, and following a code of practice, ARMA requires agents to be regulated via an independent panel of experts.
41. Professional bodies can stipulate that individuals working in firms must hold a professional qualification and there are different tiers of membership available dependent on the role of the individual in the company and the level of professional qualification held. Business owners are typically required to have a higher level of qualification and experience than employees.
42. ARLA Propertymark offer a range of training qualifications and suggests that agent employees need at least a Level 2 professional award whereas business owners must have a Level 3 Award in Residential Letting and Property Management or equivalent.<sup>13</sup> The Institute for Residential Property Managers offers professional qualifications for managing agent employees and business owners.
43. By voluntarily joining a professional association, an agent is subscribing to regulation and committing to operate to a good standard. However the inconsistencies between schemes can be confusing for consumers.

## **Regulation of Property Agents in the Devolved Administrations**

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<sup>13</sup> <http://www.arla.co.uk/join.aspx>

44. In Scotland, all managing agents are required to join a register, regardless of whether they are private companies, local authorities or housing associations. Agents must complete a 'Fit and Proper Person' declaration, follow a code of conduct, and provide a route to redress. Agents pay a fee to join the register and the Scottish Government will consider any previous convictions and information on Companies House before accepting an agent onto the register.
45. A similar regulatory framework with a mandatory code of practice is being introduced for letting agents in Scotland from 31 January 2018. Agents will need to meet minimum training requirements and failure to register will be a criminal offence subject to a maximum £50,000 fine, up to 6 months imprisonment or both.
46. In Wales, agents who are involved in letting and managing rental properties in the private rented sector must be licenced by Rent Smart Wales. Agents must demonstrate membership of redress and client money protection schemes, professional indemnity insurance and that they are 'fit and proper' (by ensuring they have no relevant convictions against them). A licence lasts for 5 years and costs between £1,890 and £6,600. The fee is graduated to reflect the size of the agent's property portfolio and a discount applies if an agent is a member of a recognised professional body.
47. Similarly to Scotland, licensed agents in Wales must adhere to a Code of Practice and hold a relevant level of training. Training courses, provided either by Rent Smart Wales or an approved third party, must provide content on statutory and contractual requirements and best practice. In addition, the agent must understand their duties to landlords and to tenants and their role in the letting and managing process. Rent

Smart Wales require that there is a robust examination process at the end of the training.<sup>14</sup>

## Codes of Practice

48. Codes can play an important role in setting a benchmark for consumers in terms of the type and quality of services to which they are entitled, and have been integral to the regulatory systems established in Scotland and Wales. They can help to tackle issues with service charges and insurance in the leasehold sector by, for example, requiring greater transparency in relation to connected companies.
49. In general, codes of practice cover:
- Ethics and Conduct – overarching standards of professional behaviour to ensure honesty, integrity, transparency of business and a good quality service that is compliant with the law.
  - Taking instructions- covering the process of instructing an agent, terms of business, requiring written statements of purposes, contract negotiations making clear what is being provided, the cost and any conflicts of interest.
  - General operating standards – this can include specifications around rent collection, viewings, referencing, inventories, property access handling lease extensions, enfranchisement and lease variations.
  - Finance – including membership of a client money protection scheme and requirements to have designated client accounts, professional indemnity insurance arrangements, up to date accounting, as well as protocols around service charges, ground rent, facilitation payments and administration fees. It can also cover rules relating to commissions received in return for services.

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<sup>14</sup>[https://www.rentsmart.gov.wales/Uploads/Downloads/00/00/00/15/DownloadFileEN\\_FILE/Minimum-Training-Content-for-Approved-Licensing-Courses-V2.1.pdf](https://www.rentsmart.gov.wales/Uploads/Downloads/00/00/00/15/DownloadFileEN_FILE/Minimum-Training-Content-for-Approved-Licensing-Courses-V2.1.pdf)

- Marketing and advertising – ensuring that marketing and communications material is clear and accurate with no significant omissions that may mislead the consumer.
- Repairs – ensuring systems and controls are in place to meet maintenance obligations and safety regulations to an appropriate standard within relevant timescales, and notifying relevant parties as necessary.
- Communications – requirements in relation to communication of rights and responsibilities, access to contact details and other relevant information and requirements to respond to enquiries within a reasonable timeframe.
- Disputes and complaints – specifying a dispute resolution and/or complaint procedure, including details on how to escalate a complaint and any appeal process.

50. We are seeking views on the minimum entry requirements and standards that property agents should follow and whether a mandatory approach is necessary.

## Chapter 2 Questions

***Q2.1 Is there a need for minimum entry requirements for managing agents, to match the existing commitment to introduce such requirements for letting agents? If so, what should these requirements include – a fit and proper person test and/ or qualifications or training? Are there any risks, for example that this might stifle innovation?***

***Q2.2 If qualifications or training are required, what should they cover? What qualifications or courses already exist and are they necessary and sufficient?***

***Q2.3 Should any qualifications and training requirements differ depending on role and service offered? (E.g. different requirements for company officers, or differing requirements for repairs compared to contract negotiations?)***

***Q2.4 What are the core elements that should be covered in setting appropriate standards for letting agents and for property managing agents?***

***Q2.5 Do Codes of Practice have a role in any future regulatory approach?***

***Q2.6 Could Codes of Practice (or any other reforms) have a role in addressing service charge abuses? Could and should they be used to tackle conflicts of interest which might arise, perhaps from connected companies?***

***Q2.7 How should a future system build on the existing codes? What elements of existing codes would be useful to retain? Are there elements that could go further?***

# Chapter 3: What regulatory approach and enforcement should be put in place?

## Type of regulator

51. The Government is interested in exploring different potential models or regulation and believes that there are broadly three ways that regulation could work:
  - a) Requiring all letting agents and managing agents to be members of a relevant professional body. This would require professional bodies or organisations to be approved by Government, possibly operating to one Code of Conduct.
  - b) As above, but with oversight from a regulatory body, established or approved by Government.
  - c) Government establishing or approving a new regulatory body, which agents are required to sign up to. Membership of a professional body would be optional but lower entry fees could apply to agents that are members of an existing body.
52. The benefit of options a) and b) is that they build upon existing structures and practices, reducing the cost and time of implementation. While this is different to the approach taken in Scotland and Wales, the size of the sector in England is far greater.
53. However, there is also a risk that consumer confidence is undermined where conflicts of interest arise and the independence of the regulator is called into question. The right corporate governance structures could help address this, and we are keen to seek views on this. The benefit of a single overarching regulatory body would be greater consistency in approach and greater clarity for consumers.

## Enforcement and sanctions

54. If regulation is to have a positive impact for consumers in the private rented and leasehold sectors, it also needs to be effectively enforced. Regulators need to be able to employ the right sanctions. Currently, local authorities have responsibilities for enforcing requirements on property agents. Financial penalties are the most common penalties for non-compliance.
55. Local authorities are already using the powers to levy financial penalties on rogue landlords, and the Government will be taking action during this parliament to use powers in the Housing and Planning Act 2016 to introduce banning orders for the most serious offences, as well as introducing a database of rogue landlords and agents.
56. The recent consultation on banning letting fees for tenants proposed the introduction of a lead enforcement authority in the lettings sector to provide oversight, guidance and support with the enforcement of requirements on letting agents and such a body could play an enforcement role the requirement to belong to a regulatory body.
57. Consumers can also play a key role in enforcing standards and educating tenants, landlords and leaseholders will also be a useful enforcement tool.
58. A range of sanctions for non-compliance could be considered. In Scotland, failure to register on the forthcoming mandatory public register of letting agents will be a criminal offence subject to a maximum £50,000 fine or up to 6 months imprisonment. This is intended to provide a significant deterrent to agents. Sanctions for failure to comply with a professional trade association's specified standards can range from an apology, a fine to the expulsion of a member from the organisation.
59. We are seeking views on the options for implementing and enforcing a new regulatory approach.

## **Chapter 3 Questions**

**Q3.1 Which of the following options do you believe would have the greatest impact in driving up standards and increasing consumer confidence in the sector:**

- a. Requiring all letting agents and managing agents to be members of a relevant professional body. This would require professional bodies or organisations to be approved by Government, possibly operating to one Code of Conduct.**
- b. As above, but with oversight from a regulatory body, established or approved by Government.**
- c. Government establishing or approving a new regulatory body, which agents are required to sign up to, with membership of a professional body optional?**

**Q3.2 What implementation issues would need to be considered e.g. cost, corporate governance requirements, timescales for introduction?**

**Q3.3 Are there other regulatory models that the Government should be exploring? Please give details.**

**Q3.4 What powers would any new regulatory body require to enforce its standards?**

**Q3.5 How could the requirement to be a member of an approved or regulatory body be effectively enforced? Should enforcement responsibility sit with any new regulatory body? What would be an appropriate penalty for non-compliance?**

**Q3.6 Should the Government establish a new regulatory body to cover all the issues within leasehold and private rented management, lettings and, potentially, estate agency? Or should separate bodies be established? Please explain your answer.**



## Chapter 4: Empowering consumers through rights to choose and switch agents and to challenge service charges

60. In addition to minimum entry requirements and codes of practice, there a range of other ways in which regulations and regulators can empower consumers and support them to hold their agents to account. For example, regulators can act as ‘consumer champions’, providing information to support consumer choice and can play an active role in raising awareness about rights and responsibilities. They can also play a role in supporting people to switch providers. At present regulators powers are limited to rights and responsibilities – they cannot advise on a property agent’s qualifications, competence or performance.
61. This is particularly important in the leasehold market where the protections in place are often lacking and reliant on challenging providers via a costly, uncertain and time-consuming tribunal process. This creates a weaker incentive for providers to treat consumers fairly.
62. The cost of major works can be a particularly problematic. Section 20 is meant to ensure that consumers have a say on these works but, in reality, offers limited opportunity for leaseholders to influence decisions on whether work is necessary or the costs that are incurred. The Competition and Market Authority’s 2014 report found that the majority of leasehold complaints related to service charges (52%) citing perceived excessive or unnecessary charges.<sup>15</sup>
63. In addition to service charges, leaseholders can face unfair administration fees when seeking permission to make changes to the

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<sup>15</sup> Competition and Markets Authority market study of Residential Property Management Services, 2014: [https://assets.publishing.service.gov.uk/media/547d99b8e5274a42900001e1/Property\\_management\\_market\\_study.pdf](https://assets.publishing.service.gov.uk/media/547d99b8e5274a42900001e1/Property_management_market_study.pdf)

property, or on sale. The Conveyancing Association has estimated that 75 per cent of leaseholders are paying excessive administrative fees as part of the sales process and that routes to redress are limited.<sup>16</sup>

64. Right to Manage is meant to offer a solution, allowing leaseholders to take over management themselves, and works well for many. However, obtaining the consent of 50 per cent of qualifying tenants can be difficult, particularly where they are not resident in the property. Some leaseholders are not eligible to access the right, for example when more than 25 per cent of the block is commercial property. Developers can abuse this by purposely building properties that exclude leaseholders from accessing these rights. The process for achieving Right to Manage status can be too complex and far many leaseholders are not even aware that this is even an option.
65. There may also be other things that we could do to support leaseholders to have greater say over their agent when they cannot access Right to Manage. For example, the Competition and Markets Authority's review of Residential Property Management Services in 2014 recommended that leaseholders should be given a right to request that the landlord retenders the service as well as a right to veto the landlord's choice of agent.<sup>17</sup>
66. We are already conducting work on a number of these fronts. We are making it easier for leaseholders to take up their rights to manage their building, through proposals to help leaseholders access contact information of others in their block. We are also in the process of reviewing Section 20 – but we believe that more can and should be done.

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<sup>16</sup> Conveyancing Association, 2016: <http://www.conveyancingassociation.org.uk/conveyancing-association-outlines-recommendations-to-end-leasehold-delays-and-overcharging/>

<sup>17</sup> Competition and Markets Authority market study of Residential Property Management Services, 2014: [https://assets.publishing.service.gov.uk/media/547d99b8e5274a42900001e1/Property\\_management\\_market\\_study.pdf](https://assets.publishing.service.gov.uk/media/547d99b8e5274a42900001e1/Property_management_market_study.pdf)

67. We are keen to seek views on what more we should do to ensure that leaseholders have the necessary rights to hold their agents to account, including on any other matters concerning regulation of letting and agents and managing agents that you do not consider to have been covered above.

## **Chapter 4 Questions**

***Q4.1 What changes could be made to ensure that consumers are protected from unfair fees and charges, including major works?***

***Q4.2 How can we support consumers to challenge unfair fees and ensure that they have a route to redress?***

***Q4.3 How can we make it easier for leaseholders to access their right to manage? What further measures are required to make it easier for consumers to choose or switch agent? Should we introduce a power of veto for leaseholders over a landlord's choice of managing agent?***

***Q4.4 Could and should a regulator act as a consumer champion? What powers might they need to support this?***

***Q4.5 Should regulatory bodies have a role in providing information to consumers about the qualifications or performance of property agents? If so how could information be of the greatest benefit for consumers? What information should be provided? Should it be public?***

***Q4.6 Are there other issues relating to the regulation of letting and managing agents that we should consider? Please explain.***

# Annex A: List of questions

## **The Case for Change**

Q1.1 Do you agree with analysis of the problems in the market set out in this chapter? What regulatory measures could better empower leaseholders to manage the quality and cost of the services they receive?

Q1.2 Is a new regulatory approach required for property management agents? If not, why not?

Q1.3 Aside from regulation, are there any alternative means the Government should consider for driving up standards and professionalism in the sector?

Q1.4 What should be the scope and objectives of any regulation? In particular:

- i. Which agents and individuals working within managing agents should be covered? Should individuals, companies and officers be treated differently?
- ii. What types of services should be included? And should any types of companies or services be excluded?
- iii. Should any other classes of people or property professionals be covered by any regulator?

## **Entry Requirements**

Q2.1 Is there a need for minimum entry requirements for managing agents, similarly to the commitment to introduce such requirements for letting agents? If so, what should these requirements include – a fit and proper person test and/ or qualifications or training? Are there any risks, for example that this might stifle innovation?

Q2.2 If qualifications or training are required, what should they cover? What qualifications or courses already exist and are they necessary and sufficient?

Q2.3 Should any qualifications and training requirements differ depending on role and service offered? (E.g. different requirements for company officers, or differing requirements for repairs compared to contract negotiations?)

Q2.4 What are the core elements that should be covered in setting appropriate standards for letting agents and for property managing agents?

Q2.5 Do Codes of Practice have a role in any future regulatory approach?

Q2.6 Could Codes of Practice (or any other reforms) have a role in addressing service charge abuses? Could and should they be used to tackle conflicts of interest which might arise, perhaps from connected companies?

Q2.7 How should a future system build on the existing codes? What elements of existing codes would be useful to retain? Are there elements that could go further?

### **Approaches to enforcement and regulation**

Q3.1. Which of the following options do you believe would have the greatest impact in driving up standards and increasing consumer confidence in the sector:

- a. Requiring all letting agents and managing agents to be members of a relevant professional body. This would require professional bodies or organisations to be approved by Government, possibly operating to one Code of Conduct.
- b. As above, but with oversight from a regulatory body, established or approved by Government.
- c. Government establishing or approving a new regulatory body, which agents are required to sign up to, with membership of a professional body optional?

Q3.2 What implementation issues would need to be considered e.g. cost, corporate governance requirements, timescales for introduction?

Q3.3 Are there other regulatory models that the Government should be exploring? Please give details.

Q3.4 What powers would any new regulatory body require to enforce its standards?

Q3.5 How could the requirement to be a member of an approved or regulatory body be effectively enforced? Should enforcement responsibility sit with any new regulatory body? What would be an appropriate penalty for non-compliance?

Q3.6 Should the Government establish a new regulatory body to cover all the issues within leasehold and private rented management, lettings and, potentially, estate agency? Or should separate bodies be established? Please explain your answer.

### **Rights to switch agents and challenge charges**

Q4.1 What changes could be made to ensure that consumers are protected from unfair fees and charges, including major works?

Q4.2 How can we support consumers to challenge unfair fees and ensure that they have a route to redress?

Q4.3 How can we make it easier for leaseholders to access their right to manage? What further measures are required to make it easier for consumers to choose or switch agent? Should we introduce a power of veto for leaseholders over a landlord's choice of managing agent?

Q4.4 Could and should a regulator act as a consumer champion? What powers might they need to support this?

Q4.5 Should regulatory bodies have a role in providing information to consumers about the qualifications or performance of property agents? If so how could information be of the greatest benefit for consumers? What information should be provided? Should it be public?

Q4.6 Are there other issues relating to the regulation of letting and managing agents that we should consider? Please explain.