



Ministry of Housing,
Communities &
Local Government

Protecting consumers in the letting and managing agent market

Government response



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Introduction

1. In England there are now 4.7 million households, 20% of the country, who rent their homes privately,¹ and there is estimated to be a further 4.2 million leasehold homes.² 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 £2.4 and £3.5 billion per year.³ The Government's Housing White Paper, '[Fixing our broken housing market](#)', published in February 2017, highlighted the Government's commitment to improve consumer choice and fairness, and increase transparency in the rental and leasehold sectors.⁴
2. The Government is committed to ensuring that those living in the rented and leasehold sectors are protected from abuse and poor service. In October 2017, the Secretary of State for Housing, Communities and Local Government announced his intention to regulate letting agents and crack down on abuses in the leasehold market, adding to previously-announced plans to ban letting fees to tenants.
3. Property agents can play an important role in protecting the value of people's 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 directly benefitting from the services that property agents provide often have no say as to who their agent is. A lack of transparency can allow unfair fees and costs to go unnoticed and unchallenged. For example, renters pay an average of £200–350 at the start of a tenancy just to move in, though these costs can be even higher in some cases.⁵ Even in cases where consumers are really unhappy with their property agent it may be difficult or even impossible for them to switch. If property agents under-manage in order to squeeze costs, leaseholders and tenants can suffer due to late and poor-quality repairs and services.
4. A lack of minimum standards has allowed unscrupulous property agents to enter the market. Currently, 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 professional body. However, others do

¹ MHCLG, English Housing Survey, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/675942/2016-17_EHS_Headline_Report.pdf, para 1.8

² MHCLG, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606387/Estimating_the_number_of_leasehold_dwellings_in_England_2014-15.pdf, April 2017, p6. Note that properties can both be owned leasehold and privately rented.

³ Competition and Markets Authority: Residential property management services: a market study, https://www.gov.uk/media/547d99b8e5274a42900001e1/Property_management_market_study.pdf December 2014, para 1.7 (note that this figure includes service charges on properties for which the freeholder is a local authority or housing association)

⁴ <https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

⁵ MHCLG, [Banning letting fees paid by tenants: Government response](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656211/Govt_response_to_consultation_on_banning_letting_fees.pdf), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656211/Govt_response_to_consultation_on_banning_letting_fees.pdf November 2017, p8

not: potentially gaining a perverse advantage through lower administration costs, than those who show the greatest commitment to professional conduct.

5. In leasehold, the structure of the system itself is partially to blame. The very nature of the agreement means that leaseholders are typically excluded from decisions on property management. A number of protections to address the imbalance of power in leasehold have been introduced over time, but these are often inconsistent, complex and can be abused by those that they were meant to defend against. Rights to challenge service charges, or to take on management directly, can be undone in a tribunal system that can often be daunting, costly and uncertain.
6. Actions to address some of the issues faced by leaseholders are outlined in the Government response to the recent consultation, [Tackling unfair practices in the leasehold market](#). These include:
 - introducing legislation to prohibit the development of new build leasehold houses, other than in exceptional circumstances;
 - restricting ground rents in newly established leases of houses and flats to a peppercorn (zero financial value);
 - addressing loopholes in the law to improve transparency and fairness for leaseholders and freeholders; and
 - working with the Law Commission to support existing leaseholders – including making buying a freehold or extending a lease easier, faster, fairer and cheaper; and reinvigorating commonhold to provide choice for consumers.
7. In October 2017, the Secretary of State committed to regulating letting agents—requiring them to satisfy minimum training requirements and to follow a Code of Practice. He also committed to exploring whether managing agents in the leasehold sector should be similarly regulated. The *Protecting consumers in the letting and managing agent market* call for evidence, which ran from 18 October until 29 November 2017, looked at whether managing agents should be regulated, the minimum standards they and letting agents should be required to meet and how these requirements would be implemented and enforced. In total, there were 1,793 responses to the call for evidence. Almost half (46%) of responses were from leaseholders or tenants, with other significant stakeholder groups including letting agents (18%), private landlords and freeholders (11% each), private tenants (10%), and leasehold managing agents (5%).
8. A parallel call for evidence, [Improving the home buying and selling process](#), ran between October and December 2017, and included questions on the regulation of estate agents. The government will publish its response to this call for evidence shortly.
9. The Government launched a consultation, [Strengthening consumer redress in the housing market](#), on 18 February 2018. This seeks views on better ways for consumers across the private-rented, leasehold, social-housing and owner-occupied sector to resolve their complaints without recourse to an intimidating, expensive and time-consuming legal battle. Among the new models we are considering is a single housing ombudsman service with remit across housing. The consultation will run until 16 April 2018. The Government will consider the evidence and views it receives there, as well

as in reply to this exercise, in its approach to the regulatory and redress framework across housing. We recognise the importance of joining up the regulatory and redress framework.

10. We are very grateful to everyone who shared their thoughts and experiences by responding. This document sets out the Government's approach to regulation in the property agents in the rented and leasehold sectors and next steps.

Note on terminology and scope

In this document, we use the term 'letting agent' to refer to businesses and individuals who provide letting and management services in the private rented sector. We use the term 'managing agent' to denote those businesses and individuals who provide block management services in the private leasehold sector. We appreciate that these terms are used variably in different contexts (particularly as both letting and managing services are offered, sometimes by different companies, in the private rented sector).

References to 'managing agents' and 'Right to Manage' should be understood exclusively as relating to private leasehold, and not, for example, to the social rented sector.

This call for evidence focused on letting and managing agents, rather than estate agents, and so we use the term 'property agents' to describe letting and managing agents together, not including estate agents. The regulation of estate agents will be covered in our upcoming response to the call for evidence *Improving the home buying and selling process*.

Government response: summary

11. Our response to this call for evidence is detailed throughout the following four chapters.
Here, however, we set out the key elements of our response for clarity.
12. We have already committed to regulating letting agents. We will extend that commitment to managing agents to protect leaseholders and freeholders alike.
13. We have already committed to a Code of Practice for letting agents. We now go further and propose a single, mandatory and legally enforceable Code of Practice covering letting and managing agents. The Code of Practice will as a minimum set standards for:
 - transparency of potential conflicts of interest;
 - transparency of current and future financial commitments to which clients are agreeing;
 - service charges;
 - communication and customer service;
 - handling of clients' money; and
 - dispute resolution.
14. We have already committed to requiring letting agents to be qualified to practice. We now intend that letting and managing agents have a nationally recognised qualification to practice. Agents will also be required to undertake continuing professional development.
15. We asked for views on what regulatory model we should follow. We agree with our stakeholders that there should be an independent regulator, covering letting and managing agents. It will own the Code of Practice, have a role regarding the content and delivery of requisite qualifications, and have powers of enforcement against those who flout its rules, including the ability to ban agents from the market altogether. We intend that criminal sanctions will be imposed on agents who practice despite being banned. We will also investigate the feasibility of a single overarching regulatory structure for letting and managing agents.
16. We also want to empower leaseholders to switch managing agents where they perform poorly or break the terms of their contract. Furthermore, we plan to simplify the Right to Manage process.
17. While the evidence presented has enabled us to make the policy progress outlined above, we now want to work closely with key stakeholders. Not only will we be working with letting and managing agents, we will also be working with tenants, leaseholders and experts on regulation, so to iron out the detail of a new regulatory approach. To this end, we intend to establish a Working Group to develop our new regulatory model. We will announce its composition and terms of reference in due course. Reference is made throughout this document to particular details on which we would like the Working Group's input.

Chapter 1: The case for change

The case for regulating letting and managing agents

18. More and more people are either renting or living in leasehold properties, which have led to a huge growth in the size of the property agent sector. It is estimated that service charges for this sector now range between £2.4 and £3.5 billion per annum.⁶ Many property agents provide a good service, looking after buildings and helping people to have a decent and safe home to live in. But the sector's size and rapid growth has attracted some agents who provide a poor service or do not provide value for money. In 2016, over 5,000 complaints were made to the three property redress services, highlighting the scale of concern that tenants and leaseholders can have, while many other dis-satisfied consumers never get as far as a formal complaint. Concern about services provided is compounded by the lack of powers for both leaseholders and tenants to effectively scrutinise and challenge the fees they pay, and their inability to switch agents when the standards of service are found to be unacceptable or where an alternative provider may provide better value.

Views were invited on the following 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? ⁷		
	Yes	No
Overall	84%	16%
<i>By market position</i>		
Tenant/leaseholder	90%	10%
Landlord/freeholder	77%	23%
Property agent	65%	35%
<i>By market sector</i>		
Leasehold interest	90%	10%
Private Rented Sector (PRS)	68%	32%

19. Overall, 84% of respondents agreed that there is a need for change.

20. The most popular regulatory measure suggested by respondents was the licensing of management agencies (supported by 20% of respondents), overseen by either a regulator or an ombudsman. The next most cited solution was a call for greater financial transparency concerning the services provided by managing agents for which leaseholders and renters were paying. A number of respondents went further and

⁶ Competition and Markets Authority, [Residential Property Management Services: A market study](#), December 2014, para 1.7 (see:

https://www.gov.uk/media/547d99b8e5274a42900001e1/Property_management_market_study.pdf)

⁷ Percentages in this box refer only to answers to the first part of this question, "Do you agree with our analysis of the problems in the market set out in this Chapter"?

stated that they wanted landlords, freeholders or managing agents (as appropriate) to declare whether they were the beneficiaries of any financial commission in return for the services provided, such as the purchase of buildings insurance, and whether that was reflected in the overall cost. One respondent went on to suggest the need for standardised accounts which are easy to understand and to the point, which should be readily available and provided alongside invoices.

21. Just under a fifth of respondents also suggested specific regulations should be provided to address concerns about increases in service charges, including help for consumers to assess the reasonableness of service charge increases. Some respondents felt that they were not aware of their service charge liabilities or that the liabilities were not clearly disclosed at the time of purchasing their leasehold property.

Q1.2: Is a new regulatory approach required for property management agents? If not, why not?		
	Yes	No
Overall	84%	16%
<i>By market position</i>		
Tenant/leaseholder	95%	5%
Landlord/freeholder	85%	15%
Property agent	72%	28%
<i>By market sector</i>		
Leasehold interest	93%	7%
Private Rented Sector (PRS)	78%	22%

22. The vast majority of respondents (84%) supported the development of a new regulatory approach for property agents.
23. The second part of this question asked for the views of those who were opposed to a new regulatory approach. This attracted a small number of narrative responses, the majority of which came from property agents. Their principal reason against a new regulatory approach was that it could impose a new cost burden on them. Some letting agents stated that they would find this cost burden harder to absorb owing to the forthcoming ban on tenant fees. A small number of respondents argued that the housing sector is a market and that free market forces should not be distorted by regulation.
24. This question attracted a larger number of narrative responses (136) from people who were supportive of regulation. Many dismissed the notion of trade body based self-regulation, noting that good property agents would sign up to a voluntary arrangement while poorer providers, not able to meet basic standards, would not.
25. The principal reason in support of regulation of property agents stemmed from a view, held by many respondents that leaseholders and tenants have been subjected to abusive practices with regards to the setting of service charges and their periodic increases. It was clear from the comments received that consumers are often surprised by the charges they receive. When viewing and considering a property, consumers are often not appropriately informed about existing charges and future

liabilities. This can result in a decision to buy or rent a property that many consumers may not have made had they been fully aware of these costs.

Government response: the case for regulating managing agents

26. Enquiries about service charges and managing agent behaviour account for a third of all queries received by the Leasehold Advisory Service.⁸ These concerns were clearly reflected in responses to the call for evidence. This suggests that the current protections under the Consumer Protection from Unfair Trading Regulations 2008 (which requires consumers to have all the information necessary to make a transactional decision) are insufficient. These regulations also have a six-year statute of limitations. Consumers may only become aware of these issues after the time limits have elapsed. For example, there have been recent cases concerning the doubling of ground rents in leasehold houses every ten years, which were either not properly disclosed or fully understood. A leaseholder discovering these arrangements after 10 years would find that it was too late to take action under these Regulations.
27. Responsible property agents meet the obligations set out in their respective Codes of Practice. Doing what is right has put responsible agents at a competitive disadvantage against rogue operators, whose main purpose is to maximise returns at the expense of their clients. We want to ensure that all consumers in the leasehold market and renters in the private rented sector are assured that their property agent is meeting minimum standards and complying with their legal responsibilities, and that there is a crack down on rogue operators.
28. To that end, we will regulate managing agents (in both the leasehold and private rented sectors). Our proposals for the form of this regulation are laid out throughout this document.

Professionalising managing agents

Q1.3: Aside from regulation, are there any alternative means the Government should consider for driving up standards and professionalism in the sector?		
	Yes	No
Overall	78%	22%
<i>By market position</i>		
Tenant/leaseholder	80%	20%
Landlord/freeholder	75%	25%
Property agent	76%	24%
<i>By market sector</i>		
Leasehold interest	80%	20%
Private Rented Sector (PRS)	74%	26%

⁸ The Leasehold Advisory Service is a specialist body funded by the Department to provide initial advice and information on a wide range of residential leasehold issues.

29. In addition to regulation, 78% of respondents agreed that other factors are required to drive up standards within the property agent sector. In contrast, 22% thought regulation should be the sole driver for improving standards.
30. The most popular suggestion was better training of property agents and that they must be accredited before they can practice in the sector. This was considered beneficial in terms of both improving professionalism and standards overall as well as deterring rogue agents from entering the market. Some respondents suggested greater use of existing Codes of Practice, backed by more robust enforcement and sanctions by existing trade bodies. This was considered by some as a means to place pressure on property agents to either improve their standards of service or lose business through reputational damage.

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?

31. When considering the detail of regulation of managing agents, a third of respondents said that any proposed regulations should apply to everyone working in the sector. Furthermore, a fifth stated that the regulations should apply to both companies as a whole and their staff on an individual basis, with one respondent arguing:

“In almost all other sectors both the company and the individual faces regulation; one tends not to work without the other”.

32. A small number of respondents wanted a distinction to be made between large and small organisations, claiming the latter would be less able to absorb any additional regulatory requirements and costs.
33. Around 5% of respondents made the distinction that it should only be senior managers (or company directors) that should be required to be qualified and liable for any enforcement and sanction activity. It was also suggested that a company as an entity should be in scope of regulation and be liable for any sanction.
34. When considering what services should be regulated, the most frequently cited response (13% of responses) called for regulations to apply to any service involving a charge. Many respondents stated that there should be ‘no exclusions’ for any types of managing agent companies or related services from regulation, as any exclusions would allow wriggle room for charging on unregulated services, which would be difficult for consumers to challenge on the basis of quality or level of charge.
35. A handful of responses sought an exemption for estate agents and technology companies who provide platforms that market properties or property agent websites, since these types of property agent may not provide management services.

36. Considering which professions or types of people that should be covered by a regulator attracted a range of responses. A strong theme emerged suggesting that everybody associated with the sector should be within scope of regulation and accountability. Several responses suggested the need for greater clarity on the breakdown of roles and responsibilities between property agents and freeholders, citing too much buck passing between the two groups. Linked to this several respondents highlighted the risks posed by sub-contracting, with ambiguity about where ultimately accountability lies between the contractor, sub-contractor, property agent and freeholder.
37. The recent controversy around the sale of leasehold properties with onerous ground rent terms led to some respondents suggesting that solicitors should also be brought into the scope of regulation as part of the conveyancing process. Alternatively, several respondents made the nuanced point that solicitors are already regulated and problems have still emerged. The [Government response](#) to the consultation, *Tackling unfair practices in the leasehold market*, made a commitment to help consumers better access justice, and to provide consumers with comprehensive information on the routes to redress, including where their conveyancer has acted negligently.⁹
38. A small number of responses cited a need for developers who act as a landlord to be regulated especially where they have ownership of a management company. It was suggested that this can pose a conflict of interest between the landlord or owner and their management agency which may not best serve the interest of consumers.
39. Some responses argued that Right to Manage groups should be exempted from any new regulation, as they are voluntarily acting on behalf of other leaseholders or tenants, though we also received views to the contrary.

Government response: professionalising managing agents

40. The Government recognises that there is a need for greater accountability. This was clear in the responses received and the strong view that no letting or managing agent should be excluded from the scope of a new regulatory framework.
41. We understand that some large property agencies can comprise hundreds of staff, while some agents act as sole traders. As detailed throughout this response, there will be regulatory requirements that affect all individuals working in the letting or managing agents sector, and some that relate to companies as a whole. The general approach we advocate is one in which the regulator's relationship should be with companies, rather than individuals, in the first instance. Agencies should carry the responsibility for ensuring that their staff meet any universal requirements or minimum standards (with sole traders being individually responsible).
42. The Government will consider the case for setting requirements, and the type of arrangements that should be in place, where freeholders do not employ managing

⁹ MHCLG, [Tackling unfair practices in the leasehold market: Summary of the consultation responses and Government response](#), December 2017, para 71

agents to act on their behalf. We will ask the Working Group to consider best practice in other countries and to consider a potential suitable and proportionate response for ensuring appropriate standards and consumer protection in these circumstances.

43. The Government believes that the new regulatory framework should apply to all managing agents. The Government will expect, as a minimum, a level of competence and professionalism within the sector and the removal of operators who are unfit to practice. We do not propose to include exceptions based on the size of the company or for sole traders. All consumers are entitled to a good quality service.
44. We will ask the Working group that consideration also be given to issues of quality and cost in relation to services that leaseholders receive from managing agents; how the current law addresses those issues; and whether greater protections are needed for leaseholders who receive those services.

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

45. This section of the call for evidence sought respondents' views on the nature and scope of the conditions of entry for those wishing to practise as letting or managing agents, and also of the potential effects of implementing these requirements. The document sought respondent's views on whether minimum entry requirements should be introduced for managing agents as well as for letting agents (the Government having already committed to the latter), what these requirements might look like, and what risks may be attached to adopting such an approach.
46. The chapter went on to seek information and commentary on two key components of any minimum entry requirements which we introduce. These are the qualifications and training which will be needed in order for an individual to be permitted to practice, and the minimum standards, as expressed through a formal Code of Practice, which letting and managing agents would be required to uphold. We sought views on current best practice in relation to existing qualifications and Codes of Practice, and on the content of whatever versions we might introduce.

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?		
	Yes	No
Overall	85%	15%
<i>By market position</i>		
Tenant/leaseholder	87%	13%
Landlord/freeholder	82%	18%
Property agent	85%	15%
<i>By market sector</i>		
Leasehold interest	86%	14%
Private Rented Sector (PRS)	84%	16%

47. A large majority within every stakeholder group agreed that minimum entry requirements are necessary for managing agents as well as letting agents. Of those who considered what form these might take, 48% suggested membership of a professional body. Just under a third (30%) of respondents suggested that minimum requirements include fit-and-proper-persons tests and 24% thought that the requirement should include continuing professional development.
48. 90% of respondents addressing the risk of stifling innovation disagreed: good agents will still innovate, in their view.

Government response

49. We have already, and remain, committed to minimum entry requirements for letting agents, and are pleased at the wide support for extending this proposal to managing agents. When anyone can call themselves a letting or managing agent and assume responsibility for the condition of peoples' homes without vetting, qualifications or professional commitments, tenants suffer; moreover, it allows a minority of rogue agents to damage the reputation of the many who discharge their responsibilities with skill and care. We will therefore set entry requirements for letting and managing agents as part of our new regulatory approach and propose to consider including fit and proper person tests, continuing professional development and training requirements.
50. We agree that continuing professional development (CPD) is important and it is a commonplace component of other professions. It ensures that skills garnered in prerequisite training do not waste away over time. CPD will encourage agents to share best practice, and will make it easier for them to adapt to any changes in the legislative or regulatory framework for the private rented sector. We therefore intend to include CPD as a minimum requirement to practice as a letting or managing agent. We will task the Working Group with developing guidelines as to its content, and how much should be undertaken per annum.

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

51. A quarter (25%) of respondents felt that professional bodies already cover all training requirements, but these should be made mandatory. The Awarding Body for the Built Environment (ABBE) and Propertymark offer courses in property letting and management at national levels two and three (and, for Propertymark, four). It is a requirement of ARLA Propertymark membership that an individual has undertaken at least a Level 2 qualification, which rises to Level 3 for company officers. The Institute of Residential Property Management (IRPM) and the Royal Institute of Chartered Surveyors (RICS) provide training towards Associate, Member and Fellow status (in ascending order of difficulty). The Chartered Institute of Housing (CIH) offers more general qualifications for housing professionals. The Association of Residential Managing Agents (ARMA) also provides training to its members. These courses cover a diverse range of topics, including relevant law, financial management, customer service and ethical conduct.
52. Some felt that professional bodies' requisites are insufficiently demanding. A few comments broadly noted further educational courses, such as NVQs and BTECs without giving examples of specific courses or levels. Over 20% of respondents did not know what qualifications are currently available.

Government response

53. There is already a range of qualifications available for letting and managing agents. We agree with many of the responses that these should continue to be the focus of professional qualification going forward.
54. We will require letting and managing agents to have attained minimum qualifications in order to practice. Tenants will benefit from knowing that their agent understands the law, has developed a structured and proper way for engaging with them, and deals professionally with their financial relationship. We agree with many respondents that training currently on offer covers these topics. However, we believe that within a new regulatory framework, there is a need to review the existing training provision to see whether it could be made more consistent across the sector.
55. While we are committed to making it harder for those who do not understand their responsibility to practice as letting or managing agents, we also do not want to create an undue barrier which talented but presently-unqualified individuals cannot overcome. In this context, we are mindful of the cost of any qualifications, and whether they could be obtained on an apprenticeship basis.
56. Our high-level commitment is to make sure that all letting and managing agents obtain a qualification that teaches them relevant law, financial management, customer service and ethical conduct. We will ask the Working Group to consider how to deliver this.

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?)		
	Yes	No
Overall	63%	37%
<i>By market position</i>		
Tenant/leaseholder	66%	34%
Landlord/freeholder	65%	35%
Property agent	53%	47%
<i>By market sector</i>		
Leasehold interest	66%	34%
Private Rented Sector (PRS)	58%	42%

57. There was general support for requirements that recognise and adapt to various roles, though more narrowly so amongst property agents. Among those favouring differentiated requirements, some focused on separate requirements for senior over junior staff, while others specified different working practices that could be focused upon. For example, ARLA PropertyMark's membership requirements include a national Level 3 qualification for company officers and a Level 2 qualification for other agents. Seven percent of those who disagreed wanted universal basic training, with divergence in courses at more advanced levels.

Government response

58. We agree that the mandatory qualifications should have regard to the diversity of roles performed by property agents. There were two strands to the training differentiation requested: between more senior and more junior staff, and across varied work tasks.
59. The minimum qualification requirement for senior company officers should be greater than that for more junior agents. We will task the Working Group with investigating where the levels should be set, being mindful that agencies should have access to senior decision-makers with a deeper understanding of the requirements around which they must build their organisation, without setting the barrier to entry for junior roles unduly high.
60. While not every agent will perform the same tasks at work, there is a public expectation of a common skillset possessed by anyone describing themselves as a letting or managing agent. We note that qualifications currently provided generally contain both core and optional modules, and believe this is sufficient to allow for specialisation in key practice areas while maintaining universal standards and basic knowledge. Industry estimates suggest that there are around 20,000 letting and managing agents; establishing and regulating a range of highly-focused courses would be a disproportionate undertaking. However, the work entailed in the private rented sector differs sufficiently from that as a leasehold managing agent that it will be necessary to have distinct courses.
61. The mandatory qualifications we describe will apply only to those staff whose regular job involves letting or managing agent work. That is to say, we do not expect that support staff such as those who clean, or cater, or provide secretarial support will be required to undertake agency training by the mere fact of their working for an agency. The Working Group may include, in its deliberations, consideration of who within an agency falls under the requirement to be suitably trained in corner cases (for example, an individual undertaking some lettings work as part of a job that is generally secretarial).
62. While minimum training requirements will apply to all agents, we intend for them to fall upon companies in the first instance, that is to say, it is the agency who bears responsibility for ensuring its staff are trained to the appropriate level (and providing the regulator with such evidence). Sole traders will bear responsibility for their own training.

Code of Practice

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

63. Answers to this question were varied. The most common suggestions were that agents should:
 - be qualified;
 - be ethical;

- engage and communicate with tenants/leaseholders throughout tenancies/leaseholds; and
- face clearly defined repercussions for transgressions against the standards agreed.

64. Many respondents stressed that without the latter element, any standards set would be irrelevant.

Q2.5: Do Codes of Practice have a role in any future regulatory approach?		
	Yes	No
Overall	86%	14%
<i>By market position</i>		
Tenants/leaseholders	89%	11%
Freeholders/landlords	85%	15%
Property agent	88%	12%
<i>By market sector</i>		
Leasehold interest	89%	11%
Private Rented Sector (PRS)	82%	18%

65. All stakeholder groups strongly support using Codes of Practice in any future regulatory approach. Over two-thirds (68%) of respondents argued that Codes would need to be enforceable legally to have significant impact.

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?		
	Yes	No
Overall	86%	14%
<i>By market position</i>		
Tenants/leaseholders	89%	11%
Freeholders/landlords	88%	12%
Property agent	81%	19%
<i>By market sector</i>		
Leasehold interest	90%	10%
Private Rented Sector (PRS)	80%	20%

66. All stakeholder groups strongly support using Codes of Practice to address service charge abuses and/or conflicts of interest. Over a fifth (21%) of respondents called for a ban on financial relationships between agents, freeholders and contractors; and 16% recommended making agents' interests more transparent (but not banning the above relationships). Again, many used this question to press for punitive measures to accompany any Code.

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

67. Responses to this question did not generate a majority in favour of any position. 23% of respondents, mostly agents, argued that present Codes are adequate but not enforced. A quarter of all answers, almost exclusively from tenants/leaseholders and freeholders/landlords, expressed unfamiliarity with existing Codes.
68. Over a fifth (21%) of respondents felt that the Codes of Practice currently used by professional bodies should be rolled into one to make it simpler for agents and clients to understand. The ARMA-Q code and the Codes of Practice produced by RICS (relating to the Private Rented Sector, Service Charges and Managing a Freehold) were mentioned as examples of best practice. The [2015 Private Rented Sector Code](#), published by RICS with input from across the sector, is perhaps the strongest attempt to standardise codification of practice.

Government response: Code of Practice

69. We recognise the clear support for including a Code of Practice as part of our regulation of lettings and managing agents. We will therefore include developing a Code of Practice within the Working Group's terms of reference.
70. As noted by respondents, there is already a variety of voluntary Codes of Practice operated by professional bodies. We agree with the need for a single Code: it is helpful neither to tenants nor agents to have a proliferation of codes setting minimum requirements. There should be a single Code of Practice setting out basic expectations for how agents conduct their business. However, the work carried out by letting agents varies significantly, for example, from that undertaken by managing agents in the leasehold sector (and there are other, smaller variations in the work carried out by different specialists within those two areas). While there will be a single Code, it will have distinct sections that apply differently to different areas of practice. We also do not intend to stop professional bodies from adopting their own, more stringent system of requirements, as long as they build upon, rather than seek to replace, the minimum standards that we create.
71. The purpose of a Code of Practice is to establish clear minimum standards, both at a high-level (how agents should behave and conduct their business) and at the lower level, describing the correct way to approach the various elements of letting and managing agent work. While all letting and managing agents will be covered by the Code of Practice, the document will make clear which sections apply to agents depending on the practices in which they engage (e.g. that block management practices do not apply to letting agents in the private rented sector).
72. In response to Question 2.6, there were extremely positive responses across stakeholder groups to our suggestion of using a Code of Practice to address conflicts of interest and (often related) service charge abuses, and we intend to include these

within the Code: the Working Group will be responsible for devising an approach to minimise such abuses. The Code of Practice will as a minimum address:

- transparency of potential conflicts of interest;
- transparency of current and future financial commitments to which clients are agreeing;
- service charges;
- communication and customer service;
- handling of clients' money; and
- dispute resolution.

73. We will task the Working Group, in the first instance, with formulating a Code of Practice from these principles, based on existing Codes of Practice, published by RICS, which is in the process of being updated from its most recent iteration in 2015. We will ask them to have regard to codes that already exist in the sector but also in other countries (e.g. Scotland) and sectors (such as law).
74. We also note the concerns from a variety of respondents that Codes of Practice are currently in use but have little to no effect on the way that a number of agents behave. 68% of respondents asked for any new Code of Practice to be enforceable legally; we agree. The Working Group will assess whether this is better accomplished by enshrining a Code in statute, or granting another body, such as the regulator, the power to make a code that is legally enforceable.
75. Similarly to our specifications on training requirements, the Code of Practice will apply in the first instance at the agency level, rather than to individual agents: but companies will be responsible for ensuring their staff comply with relevant aspects of the code (again, sole traders will be responsible for their own compliance).

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

76. In this section the call for evidence document sought opinions on the mechanics of any regulatory requirements to be introduced for letting and managing agents. We looked at the potential inter-connections between any new regulatory body (should one be established) and the existing professional bodies, the implementation issues we should be aware of in introducing any new regulatory framework, and the models, from other sectors or international contexts, which should be considered. We also sought respondents' views on the powers which any regulatory body may require, and the mechanisms through which these powers will be enforced.

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?			
3.1	A	B	C
Overall	23%	45%	32%
<i>By market position</i>			
Tenant/leaseholder	17%	49%	34%
Landlord/freeholder	31%	38%	24%
Property agent	42%	36%	22%
<i>By market type</i>			
Leasehold interest	18%	48%	33%
Private Rented Sector (PRS)	37%	35%	26%

77. None of the options garnered a clear majority among any stakeholder group. However, option (b)—combining mandatory professional-body membership with regulatory oversight, attracted plurality overall, and with all groups save agents.

78. Options without a distinct regulatory body were particularly unpopular with tenants, leaseholders, and those in the leasehold sector more generally. There were suggestions of conflicts of interest inherent in private bodies regulating agents while collecting membership fees from them. Others were concerned that the standards of the different professional bodies vary so rogue agents would choose to join a body with lower standards in order continue operating.

79. There were arguments that the disparity in standards could be resolved by making professional bodies work together, for example by creating a single Code of Practice. This suggestion was made most prominently by leasehold and letting organisations.

Government response

80. We agree that the potential conflict of interest in the professional bodies having to sanction or ban letting agents when the body is reliant on membership fees from said agents is one that should be avoided. If regulation is to be effective, all parties must be confident that the standards required are ultimately enforced by a party with no financial disincentive to look the other way.
81. The existing professional bodies, while providing much-needed services, do not exist solely for the purposes of instructing their paying members that they must conduct their business according to particular standards, and ensuring that they do so. They also advocate for their members' interests, lobbying Government and others, in a way that would be untenable with any role as an executor of public policy. Regulation must also be consistent, and that would be impossible to achieve with separate bodies free to hold the same professionals to different standards.
82. We believe that an independent regulator will better protect everyone's interests and instil confidence into the industry. As in many other regulated sectors (such as the legal professions) the regulator should also have a role in controlling the content of the qualifications which will underpin the delivery of the required standards, ensuring that their providers are delivering and awarding them in an appropriate manner.
83. Central to the Working Group's task will be investigating how this model is to function in practice, taking into account the considerations expressed throughout this Chapter, for example costs and timescales. We will instruct it to study whether the independent regulator should be a new public body, or if there is an existing organisation that could be approved by Government to fulfil this duty. With particular regard to the role of professional bodies, it must examine whether they can manage their members' regulatory affairs in the first instance, creating an indirect relationship between agent and regulator; or it is necessary for the regulator to maintain a direct relationship with all agents regardless of their membership of a professional body.

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

84. Respondents to this question focused almost exclusively on cost and timescales for introduction. Tenants and leaseholders wanted immediate action (20% of responses) and were unconcerned by cost (3% of responses). Eleven percent of respondents referred to the timescale as an issue that would need consideration, with just over half of those saying that staged implementation is necessary. Fourteen percent of respondents felt that cost of implementation is the main issue, this answer predominantly came from letting agents and managing agents.

Government response

85. While we understand the pressing need for the proposed regulation, we will ensure that the timescale is manageable for all stakeholders and understand the risks of hasty implementation. Creating the new regulatory framework we have described will

require primary legislation and must be implemented coherently with any changes to redress provision in the sector.

86. Regarding cost, it is well-established across many regulated professions that the regulated people and organisations should pay: property agents themselves should fund the regulator's activities. This is the fair thing to do, it is the property agents who profit from access to a market in which their reputation is paramount, and a portion of the fees will be passed to their clients, who also benefit from the assurance and protection that regulation brings. However, we do not want to burden agents unnecessarily, and will ask the Working Group to look at measures to control fees. As members of professional bodies already pay subscriptions, this may include offering them a discount, perhaps in return for a role as intermediary between regulator and agent as described above.

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

87. Respondents produced the following suggestions:

- existing UK architectural and property regulators (9%);
- financial and banking regulation, in particular the Financial Conduct Authority (FCA) (7%);
- various overseas models (particularly Australia, France and the Netherlands) (6.7%); and
- the Scottish approach (4%).

88. The Regulator of Social Housing is an independent body responsible for the regulation of registered providers of social housing in England. It sets the Economic and Consumer Standards that registered providers are required to meet. The Regulator proactively regulates private registered providers on their Economic Standards, but can only monitor and enforce the Consumer Standards on a reactive basis. It will only intervene on failures to comply with Consumer Standards where they have caused (or could cause) serious harm to tenants.

89. In Scotland, letting agents are regulated on an individual level. Letting fees paid by tenants were banned in the Rent (Scotland) Act 1984 and this ban was further clarified in 2012 under the Private Rented Housing (Scotland) Act 2011. The Housing (Scotland) Act 2014 introduced further regulatory requirements, which were implemented from 31 January 2018. These comprise a statutory Code of Practice, setting out the standards expected of letting agents in Scotland, a mandatory public register of agents with associated training requirements and a 'fit and proper person' test, and powers for Scottish Ministers to obtain information and perform inspections to help them monitor compliance.

90. In Wales (which was mentioned by a smaller number of respondents), a landlords and agents involved in letting and managing rental properties must be licenced. This scheme is administered by Rent Smart Wales, which must be satisfied that the landlord or agent is 'fit and proper' (by ensuring they have no relevant convictions against them) and that the training completed by the applicant and their staff is adequate.

91. The FCA regulates the conduct of some 56,000 businesses, since by industry estimate that there are roughly 20,000 letting and managing agents, this is almost triple the size of the market that we are seeking to regulate. The FCA offers two tiers of regulation dependent on the size of the contracts in which a company is involved and the nature of the information being utilized, authorizing particular businesses to practice and registering others (which requires business to send less information).
92. Australian Capital Territory (ACT) and Western Australia both require real estate agents to be licensed. In ACT, real estate agents are required to take more units within the Property Development and Management Training Package than salespeople. The Government of Western Australia: Department of Mines, Industry Regulation and Safety requires real estate and business agents to hold a current triennial certificate, of which there are different iterations for individuals, firm partnerships, corporate bodies and sales representatives. The requirements include a Police Check, financial information, qualifications (for example a Diploma of Property Services) and experience, and two references.
93. In the Netherlands, the majority of rented accommodation is provided through the social rented sector. With regards to private rentals, professional body NVM covers the majority of real estate agents (including those dealing with rentals), and has compulsory professional training and a broad Code of Practice. It runs the online property portal *Funda*, enabling individuals to search property for rent or sale. Combining a professional body with an online property portal provides an incentive for agents to join. In France, estate agents must renew their practice licences annually, which entails passing a criminal record check and taking appropriate care over client money.
94. The Care Quality Commission (CQC), the General Medical Council (GMC) and the Medical Practitioner's Tribunal Service, which deals with examples of malpractice by GMC members and provide other interesting case studies of regulation mentioned by our respondents. There are both strict, standardized qualifications for doctors, and severe consequences for those who are found guilty of misconduct, who can be struck off and thus debarred from practicing. The CQC, which by contrast to the GMC does not deal with a specific profession and instead registers and regulates a diffuse range of services (rather than individuals as such), including, for example, care homes, dentists and hospitals, does not prescribe any minimum qualifications as a condition of operation. They instead specify broad minimum standards of quality and safety. They are not able to ban individuals of their own volition, instead following a process whereby they issue warning notices, cautions, fines and then pursue prosecution through the courts in cases where people are harmed or in danger of harm.
95. In the legal sector, the Legal Services Act 2007 establishes the Legal Services Board as an umbrella regulator, presiding over several distinct bodies authorised to regulate specific professions: these include the Law Society (for solicitors) and the Bar Council (for barristers). All legal professionals are required to belong to these professional bodies, which delegate regulation to independent subsidiaries, respectively the Solicitors Regulation Authority and Bar Standards Board, which have the power to exclude individuals from their professions, as well as control over prerequisite qualifications.

Government response

96. We will be pursuing a model involving the creation or approval of a regulatory body that sits separately from professional and trade bodies. We will ask the Working Group to consider an appropriate regulatory model for letting and managing agents learning from the models cited above and bearing in mind the cost effectiveness of the different regulatory approaches.

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

97. The most common response (39% of respondents) was that a regulatory body should be able to stop an agent or landlord from operating in the industry. A common complaint, principally from tenants and leaseholders, was that unscrupulous agents can simply close down their business and start a new one with impunity. A third (33%) of respondents suggested powers to impose financial penalties on agents found to have been in breach of the agreed standards. A few respondents (10%) felt that criminal sanctions would be necessary in extreme cases. Also advocated were:

- powers to audit and inspect properties;
- the power to take over management of property; and
- the power to publish details of banned agents.

98. A small number of respondents did not believe new powers were necessary (either because they felt new regulation was unnecessary or because of the strain on resource they thought new powers might engender).

Government response

99. The regulator will have powers to ban letting and managing agents from operating. It is crucial to its role that it is able to prevent rogue agents persisting in the market. While we recognise the potential deterrent and protection granted by publicising agents so banned, this may have a disproportionate effect on the individuals concerned, and we will ask the Working Group to look at these matters. For infractions that fall short of this severity, it would also be appropriate for it to impose financial sanctions; the Working Group will investigate what the upper limit on the value of these should be.

100. While we recognise the argument that criminal sanctions are necessary in the most egregious cases of agent misbehaviour, it is not clear what new criminal offences might effectively be applied to agents for breaking the code of practice. We will ask the Working Group to consider this matter.

101. Several responses contended that the power to inspect properties would be necessary for the regulator to have a sense of real-world conditions. We agree.

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?

102. The most popular suggestion regarding effective enforcement was membership transparency. Respondents cited certificates and public registers among means to accomplish this. Additional proposals included frequent audits and inspections, public education, and good complaint handling.
103. Four-fifths of respondents offering an opinion on the location of enforcement responsibility agreed it should sit with any new regulatory body; the remainder was roughly evenly divided between local authorities and existing redress schemes.
104. Ideas on appropriate penalties for non-compliance largely mirrored those proffered under Q3.4 above: around one-third (36%) called for financial penalties, another third (36%) suggested withdrawal of licences-to-practice, and almost one in ten (9%) called for criminal sanctions (for major breaches). Also suggested were:
- compelling action by non-compliant agents;
 - retrieving an agent's assets;
 - restricting agents' payments or ability to charge fees; and
 - issuing written warnings.

Government response

105. There was strong support for enforcement against agents not complying with their requirement to be regulated to sit with any new regulator. However, we note that similar enforcement responsibilities, such as the requirement for agents to belong to a redress scheme, tend to sit with local authorities, and that a regulator may by definition struggle to identify those agents who have evaded it. We do believe that close cooperation between the regulator and local authorities will be central to effective enforcement. It will be for the Working Group to investigate further where precisely these enforcement responsibilities should lie. We agree with the strong support for transparency requirements, and will mandate that agents to display and prove that they are regulated. We propose to make it a criminal offence for anyone who practices as a letting or managing agent despite having been banned.

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?

106. Almost half (47%) of respondents (a majority of those answering this question) called for a unitary regulatory body across leasehold, private rented management and lettings, and estate agency. Arguments for this position included:
- overlap between the sectors (16% of these respondents);
 - agents participating in multiple sectors (16%);
 - it would be easier for tenants, leaseholders and buyers to understand (12%);
 - it would be cheaper and more efficient (10%); and
 - achieving consistency across the sectors (8%).

Many respondents noted that such a body should recognise the sectors' differences.

107. A few respondents felt that each sector would require its own regulator. Most of these (87%) cited the difference between the services provided in each sector as a reason; while a smaller number contended that discrete bodies would be more efficient than a single, larger organisation.

Government response

108. There is considerable overlap between agents in the private-rented, leasehold, and home buying sectors. We recognise that creating a single regulator spanning all of private-sector housing may be more cost-effective and give consumers the confidence to move between different tenures knowing that they will be covered by the same regulatory framework. However, we recognise that there are important differences between the sectors, and will therefore ask the Working Group to consider the feasibility of a single overarching regulatory structure.

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

109. The call for evidence document explored a number of failings within the current regulatory systems and the limited recourse available to leaseholders and tenants to ensure a better and fairer service. A range of concerns about services provided by the sector were highlighted, these include: the professionalism, qualification and competence of property agents, as well as agents not being properly held to account for the services they provide. A number of difficulties for leaseholders and tenants were also raised in terms of trying to swap their managing agent or even taking on management of services themselves.

Fees and the Right to Manage

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

110. Private renters will be protected from additional fees and charges through the banning of letting fees to tenants. With regards to protections from unfair fees and charges for leaseholders, three main themes emerged. Firstly, a call for greater transparency on how the costs of major works are calculated, but also the cost of service fees charged with an explanation of recent increases. Secondly, calls for a Code of Practice, and thirdly, the need to empower leaseholders to make decisions on how property services are managed.

111. Many leaseholders are unclear about their service charges, how they were priced, and whether or not costs are justified or if are paying too much. Some suggested that managing agents did not want to over-burden their clients with too much detailed information. However, others thought that managing agents' clients might be more accepting and understanding of the charges if there was a clearer breakdown of costs. A number of respondents highlighted the need for a standardised format for information on charges, which would improve understanding of costs and allow comparison between providers and properties.

112. 20% of responses wanted to see regulation of managing agents, with a range of suggestions including the provision of a new industry wide Code of Practice or making existing Codes of Practice work better with more specific guidance on the setting of fees. Some responses suggested these provisions should highlight tenants' and leaseholders' rights to transparency of fees and how fees can be challenged, if they are deemed unfair or inconsistent with the Code. Chapter two of this document addresses this matter further.

113. A small number of responses expressed a desire for a new redress body like an independent ombudsman, to provide an easy access route to redress and a proper and effective penalty system for bad managing agents. Concern was raised that the

First Tier Tribunal process was seen as complex, cumbersome and costly, and there was a call by some for its simplification. Others suggested that there should be a cap on fees charged. This ranged from a call for a universal cap on all fees, to only certain prescribed management and administration fees being subject to a cap.

114. Around 7% of respondents suggested establishing a mandatory sinking fund was a better means to absorb major work costs and indicate where there is a shortfall in funds for future programmed works. Many respondents also wanted a greater role in the decision making of the fees set and contractors selected.

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

115. Over a third of respondents were very clear in their desire for a statutory independent ombudsman who would be able to resolve cases before they reached the First Tier Tribunal. While all letting and managing agents are required to belong to an existing Government approved redress scheme, this suggests that the current position on redress is not well understood. Some respondents specified that the redress process should be a quick and affordable adjudication system. This was further supported by the 12% of respondents who specifically objected to the First Tier Tribunal process and criticised it for being too long and expensive.

116. Many responses highlighted the difficulties some consumers have in terms of the sequencing and triaging of a complaint, but also knowing which body they can raise their concerns with. Respondents highlighted their lack of knowledge on this issue as a number of them called for a helpline or website, similar to Ofcom or the Citizen's Advice Bureau, which they could turn to for free advice, including legal advice. Additionally, some respondents called for increased awareness of consumer's rights. Respondents noted that they have existing rights on many issues but they were either hard to find or too difficult to understand.

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?

117. There was a clear expression from many respondents that they were unsure on how to embark on the Right to Manage process. Added to this was concern about the number of legal requirements that must be met, some of which can be challenging for an inexperienced applicant. Many saw this as 'legal chicanery', as failure to comply with these requirements voids the application. Moreover, it was suggested some freeholders are willing to use technicalities as a pretext to prevent or delay Right to Manage applications. Most Right to Manage applicants lack legal expertise and find understanding the process documentation difficult, especially its legal terminology.
118. In addition, applicants felt that their claims can be priced out by wealthy freeholders and that they are unable to pay high legal costs. Building on this, several respondents suggested that there should be a cap placed on legal fees.

119. Other suggestions included a lower mandatory threshold to trigger a Right to Manage process. At present, at least two thirds of flats must be let to 'qualifying tenants' (leases of more than 21 years when first granted); and at least half of the flats in the building, held by long leaseholders, must take part. Some responses also suggested that Right to Manage should be made a compulsory option for leaseholders to either take up or decline on when the majority of units in a development are completed and sold. A small number of respondents highlighted problems concerning Right to Manage and existing rules around mixed-use developments where more than 25% of space is allocated to commercial or non-residential use. It was suggested that the number of mixed use developments is increasing and it is currently impossible for these leaseholders to exercise their Right to Manage.
120. A few respondents disagreed with widening access to Right to Manage. The two main concerns were that leaseholders were ill equipped to manage their own accommodation and that it would be better for the freeholder to do this. In the case of retirement properties, it was suggested there may be little appetite amongst residents to manage their property on behalf of others and instead would prefer to enjoy their own retirement.
121. On making it easier for consumer to switch agent, 5% of respondents argued for the introduction of time limited contracts with managing agents. Some expressed a desire for a simplified process of changing managing agents, one no more difficult than switching utility provider. A number of respondents suggested that poor performance should be grounds for switching an agent. But this was cautioned against by one respondent who suggested that switching agents mid-contract may be likely to attract a higher fee, as an incoming agent may state they will have priced some risk against the previous agent's work.
122. All most all (86%) respondents supported the provision of a veto against a landlord's choice of managing agent.

Government response: Fees and the Right to Manage

123. It is clear that existing requirements around the setting and scrutiny of fees is too opaque and open to abuse. Many tenants and leaseholders find the presentation of fees difficult to understand and therefore struggle to take a view on which fees are justified and which fees are not. Many consumers have to meet a range of financial pressures, so when unexpected costs arise they can accordingly find themselves in a very difficult situation, which can cause significant financial and emotional distress. Moreover, surges in cost can be difficult for fixed-income consumers, such as pensioners, to meet.
124. We will ask the Working Group consider how fees should be presented for consumers (including prospective consumers) and explore the best means to challenge fees which are unjustified. As part of this work, consideration will be given to standards around service charges and how to include them in a statutory Code of Practice (as discussed in Chapter two of this document).
125. We will ask the Working Group to look into those fees and charges that go beyond leasehold service charges, but can impact both leaseholders and freeholders, and

consider under what circumstances they are justified, and if they should be capped or banned. This includes the use of restrictive covenants, leasehold restrictions, administration charges and other charges placed on properties.

126. The existing arrangements to challenge unfair fees are limited where their freeholder does not employ a managing agent and is not signed up to a redress scheme. This leaves leaseholders at a disadvantage, as their only route to redress is through the courts. Many consumers do not have the financial resource or capacity to mount and sustain a legal challenge against their landlord or freeholder.
127. The Government is currently consulting on strengthening redress in housing, which explores whether freeholders of leasehold properties should be required to sign up to a redress scheme.¹⁰ Managing agents are already required to belong to such a scheme, though that consultation also considers measures to improve existing means of redress now.
128. The general appeal of Right to Manage is better control and monitoring of expenditure. This can be difficult to achieve if a landlord wishes to retain control of asset management and cost-setting and resists the establishment of a Right to Manage group. A large number of Right to Manage applications fall down on technicalities which have been attributed to an overly-detailed procedure. The ruling in the Court of Appeal judgement in *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] stated that that the Government may wish to consider simplifying the procedure further, or to grant the First Tier Tribunal a power to relieve against a failure to comply with the requirements if it is just and equitable to do so.¹¹
129. We will introduce reforms to simplify the process of leaseholders obtaining their Right to Manage. We will also introduce measures where a leaseholder can veto a landlord's choice of managing agent where justified, periodically review their performance and switch agents when agreed levels of service have not been achieved and maintained.
130. The growth of mixed-use properties (for example, a street-level shop with a flat above) is increasing, particularly in urban areas, and this type of property poses challenges for consumers who wish to exercise their Right to Manage. However, a balance needs to be struck between commercial functions of a building and the interests of its residents. We will review and consider whether the existing threshold for Right to Manage qualification strikes the right balance and is fit for purpose as more mixed-use dwellings are developed.

¹⁰ MHCLG,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684843/Strengthening_Redress_in_Housing_Consultation.pdf, February 2018, para 40

¹¹ *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 (23 February 2017): <http://www.bailii.org/ew/cases/EWCA/Civ/2017/89.html>

The regulator's relationship with consumers

Q4.4: Could and should a regulator act as a consumer champion? What powers might they need to support this?		
	Yes	No
Overall	82%	18%
<i>By market position</i>		
Tenant/leaseholder	92%	8%
Landlord/freeholder	77%	23%
Property agent	45%	55%
<i>By market sector</i>		
Leasehold interest	89%	11%
Private Rented Sector (PRS)	61%	39%

131. This question attracted overwhelming support (82%) for a regulator to act as a consumer champion, that is, to advocate on behalf of consumers, as well as having a role in setting and enforcing agreed standards. From the table above, support for a regulator as consumer champion came from individual leaseholders, freeholders and landlords. The majority of those opposed came from existing property agents and portfolio freeholders.
132. The biggest theme in this area was for respondents requesting a regulator that would be responsive and effective in its enforcement and prepared to punish breaches of regulation, even up to banning agents from practicing. A number of respondents stated that an effective regulator would need to be appropriately funded and resourced with people capable of investigating and determining if breaches have occurred, echoing responses to questions in Chapter three.
133. A number of respondents suggested that there should be a single overarching regulatory body for all property agents. It was also suggested that powers of such a body should mirror similar regulatory bodies such as Health and Safety Executive or the Office for Gas and Electricity Markets (Ofgem), both of which can regulate the activities of their sectors and enforce those regulations.
134. A small number of respondents were opposed to a regulator acting as a consumer champion. Such responses argued a consumer champion would make little difference while adding another layer of unwanted bureaucracy.

<p>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?</p>
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135. There was strong agreement that a regulatory body should have a role in providing information on the qualifications or performance of property agents. Four out of five respondents agreed and almost half thought that this information should be made public. A minority of respondents disagreed and commented that regulatory bodies should not provide this type of information, or that it would be unnecessary.

136. Some respondents suggested that there should be a ranking system of property agents. This could take the form of a star rating system or league table. This would enable consumers to get a sense of agencies' competence, quality of service, professionalism and transparency, which could be compared against other agents. Examples given included Ofsted's assessment system for schools and the Food Standards Agency's ratings of cleanliness in the preparation and servicing of food in restaurants and takeaways.
137. Some respondents also suggested that such information should be available only, where it would be easy for consumers to access and understand before deciding whether to engage a particular agent's services. Several respondents noted it would be beneficial for some consumers to offer hard copies of the information, for example, at public libraries or post offices. A few respondents were opposed to information being made public, stating that there is already, or will be adequate provision through an agents' adherence to a Code of Practice.

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

138. No significant additional issues were raised. Some respondents highlighted issues that were not related to the scope of the call for evidence, such as requesting the banning of leasehold houses, the reinvigoration of commonhold and calls for councils to adopt shared spaces on private and mixed-use estates. This call for evidence closed before the Government announced its package of leasehold reforms on 21 December 2017. Understandably, at the time in the absence of such an announcement, some leasehold respondents saw this call for evidence as an opportunity to highlight their wider frustrations and anxieties with the leasehold tenure.
139. A smaller number of responses requested that a distinction be recognised between letting agents and managing agents, as well some leniency for smaller providers, who may not be able to adapt to the changes in regulatory requirement as easily as larger competitors.

Government Response: the regulator's relationship with consumers

140. We recognise the support for the regulator to act as a consumer champion and providing information to help and inform private tenants and leaseholders. This support could take a number of forms, including: publicity campaigns to alert consumers on risks to be avoided; warning property agents of the reputational risks associated with poor practices that have adverse consequences to tenants and leaseholders; and advising Government where necessary on the possible need for further action. The Working Group will consider how a regulator could most effectively perform this function, drawing on best practice from other sectors.
141. There may be a case for the regulator to provide comparable information on agents for consumers, including as suggested through the call for evidence, an online rating or ranking system. Any such approach would need to ensure accuracy and fairness. We will ask the Working Group to look into the feasibility of these suggestions.