Property Management Services

A scoping paper

December 2013
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1 INTRODUCTION

1.1 This paper accompanies the Office of Fair Trading’s (OFT) press release dated 3 December 2013, announcing the OFT’s proposal to conduct a market study into the market for the provision of residential property management services in England and Wales. It sets out the relevant background information and the OFT’s proposed scope of the market study.

1.2 Before commencing the market study, however, the OFT wishes to seek the views of interested parties on the proposed scope of its study to ensure that the correct issues are being considered, and whether any key issues, in your opinion, are missing or are not represented fully. Please note, at this stage, we are not seeking substantive views on issues that fall within the proposed scope. We would welcome any such views after we have launched with a finalised scope, which is planned for early 2014.

1.3 The remainder of this paper provides information on the following:

- the role and possible outcomes of a market study
- what prompted the OFT to propose a market study into the provision of residential property management services
- the proposed scope of the market study
- information on how to respond to this scoping paper.

1.4 The OFT is committed to working constructively and transparently with interested parties during the market study. The OFT’s website page¹ (and subsequently, the CMA’s website page) will be updated as the market study progresses and will include, amongst other things, further information on timing and contact details for key team members. If you would like to be notified when the website is updated the OFT recommends that you register on the OFT website (www.of.t.gov.uk/subscribe).

¹ www.of.t.gov.uk/OFTwork/markets-work/residential-property-management
1.5 Parties wishing to obtain further information on this proposed market study should contact:

- Senior Responsible Officer: Cavendish Elithorn on 020 7211 8170, cavendish.elithorn@oft.gsi.gov.uk
- Project Director: Douglas Cooper on 020 7211 5858, douglas.cooper@oft.gsi.gov.uk
- Team Leader: Darren Eade on 020 7211 8534, darren.eade@oft.gsi.gov.uk
2 THE ROLE AND POSSIBLE OUTCOMES OF A MARKET STUDY

Role of a market study

2.1 The OFT aims to make markets work well for consumers. It achieves this by promoting and protecting consumer interests throughout the UK, while ensuring that businesses are fair and competitive.

2.2 Typically, market studies are examinations into the causes of why particular markets may not be working well for consumers, leading to proposals as to how they might be made to work better. They take an overview of regulatory and other economic drivers in a market and patterns of consumer and business behaviour.2

2.3 In April 2014, the Competition and Markets Authority (the CMA) will become the UK’s lead competition and consumer body. The CMA will bring together the existing competition and certain consumer protection functions of the Office of Fair Trading and the responsibilities of the Competition Commission, as amended by the Enterprise and Regulatory Reform Act 2013. The CMA, which is a non-Ministerial government department, was established on 1 October 2013 and will be taking on responsibility for cases and market studies from 1 April 2014. See the CMA’s home page (www.gov.uk/government/organisations/competition-and-markets-authority) for more information.

Possible outcomes of a market study

2.4 Market studies can lead to a range of outcomes. They may conclude that a market can be given a clean bill of health and that the initial concerns about consumer detriment are not substantiated by the information collected over the course of the study.

2.5 Where the market is found not to be working well, there are several options that OFT will consider to address the causes. These may include one or more of the following:

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2 Further details about the OFT’s approach to market studies can be found in the OFT’s publication Market Studies: Guidance on the OFT approach (June 2010) www.oft.gov.uk/shared_oft/business_leaflets/enterprise_act/of519.pdf
- recommendations to the industry, including for example property management companies and freeholders
- improving the quality of information available to leaseholders
- investigations into and enforcement action against businesses suspected of breaching consumer or competition law
- making a market investigation reference
- recommendations to Government.

2.6 The above is merely an illustrative list of possible outcomes. The OFT retains an open mind as to which outcomes, or combination of outcomes, may be appropriate to address any concerns that it may identify during the course of this proposed market study.
3 WHAT PROMPTED THE OFT TO PROPOSE A MARKET STUDY INTO THE PROVISION OF RESIDENTIAL PROPERTY MANAGEMENT SERVICES?

3.1 Several recent pieces of work have addressed issues related to the provision of residential property management services.

3.2 The OFT published its market study into Property Managers in Scotland in February 2009. The study found there was very little evidence of active competition between property managers to encourage customers to switch. It found that this, combined with difficulties in switching and the complexity of the legal situation meant the market did not work well for consumers. A recent Northern Ireland Law Commission report identified concerns relating to property management services. The OFT would like to understand whether a similar situation applies in England and Wales.

3.3 These reports, and others, have detailed various concerns around property management. From these reports and other stakeholder contacts, the OFT has heard views that some providers may be overcharging customers, providing poor quality services or spending money on unnecessary projects. It has also been suggested that some property managers may not deal effectively with complaints and there were concerns over access to effective redress.

3.4 The OFT has undertaken recent work in relation to retirement homes, for example on retirement property transfer fee terms. During the course of this work, concerns were raised over practices relating to the management of retirement properties.

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5 For example, London Assembly, Highly charged - Residential leasehold service charges in London, March 2012 (www.london.gov.uk/mayor-assembly/london-assembly/publications/service-charges-in-london)
6 However, we understand disputes often relate to problems experienced by agents because of non-payment of bills.
7 OFT investigation into retirement home transfer fee terms, February 2013 (www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/retirement-homes)
3.5 The Department for Communities and Local Government (DCLG) is responsible for housing policy. The Enterprise and Regulatory Reform Act 2013 (ERR Act) contains provisions for order making powers to make it compulsory for all property managers and lettings agents to be members of a government approved redress scheme. DCLG has already invited applications for redress schemes but it has also said that it would '…conduct a significant review after a year’ and re-opens the invitation to submit schemes for approval. Therefore the market study’s findings could be fed to DCLG at that point.
4 PROPOSED SCOPE OF THE MARKET STUDY

4.1 The OFT is now seeking views on the scope of its proposed market study. At this stage, the OFT proposes to examine the issues set out in paragraphs 4.2 to 4.9.

4.2 The OFT proposes to look at leaseholders’ perceptions of value for money and the quality of services they receive. For example, do leaseholders feel that the service charge they pay is reasonable, and do they receive the right level of service for what they pay? Do leaseholders feel confident that the property manager is acting in their best interests when procuring communal works? Are there different perceptions in relation to retirement properties? If there are concerns, we propose to consider whether there is evidence to indicate that charges or service quality are not at appropriate levels.

4.3 Leaseholders have legal rights to information and consultation. For example there are some statutory requirements to consult leaseholders over works being carried out and requirements to provide financial statements. Even so, it may remain difficult for leaseholders to establish whether the property manager is providing value for money and whether the level of service provided is of a sufficient standard. We propose to explore whether this raises problems in practice. We also propose to explore whether leaseholders have sufficient understanding of their rights and obligations with regard to the management of property.

4.4 We will consider whether leaseholders have sufficient influence on decisions taken by freeholders in relation to the appointment of property managers, and subsequently in the supply of property management services.

4.5 We propose to consider whether property managers and freeholders have the same interests as leaseholders in, for example, keeping down costs of maintenance work or buildings insurance. We also propose to look at whether property managers’ and freeholders’ choice of contractors and services may be influenced by any links with associated companies and the availability of commissions.
4.6 We would be interested in hearing how leaseholders' rights to self-management work in practice; for example, whether there are difficulties in coordinating leaseholders to work collaboratively, and whether any problems may be more marked in some areas, such as for retirement properties.

4.7 From our previous work looking at property managers in Scotland, we found that switching levels were low, and so we would be interested in learning whether switching levels in England and Wales are similarly low in this sector. The Scottish study found that competition between property management companies was mainly focused on new build developments and not on gaining customers who already employ the services of a property manager. We propose to consider carefully whether competition between property managers is working well.

4.8 Currently, leaseholders can seek redress through the Lower Tier Tribunal - Property Chamber (Residential Property) (formerly the Leasehold Valuation Tribunal). In addition, the industry is adopting a self-regulation scheme (ARMA-Q, run by the Association of Residential Managing Agents) and as noted in paragraph 3.8, DCLG will be requiring all property managers to be members of a government approved redress scheme. We propose to consider whether any problems we might identify, including the time and effort required, might impair the effectiveness of redress through these schemes.

4.9 We also propose to consider the standard of customer service when dealing with service enquires from leaseholders or dealing with complaints.

Geographical scope

4.10 It is proposed that the market study should only look at property management services in England and Wales.

4.11 The OFT carried out a market study looking at the supply of property and land management services in Scotland in 2009 and its recommendations made in its report are still feeding through. In addition, the legal system affecting property law is substantially different in Scotland.
4.12 The legal provisions in Northern Ireland also differ. The Northern Ireland Law Commission has already done substantial research in this area and proposed significant measures including regulatory changes. We propose, therefore, to exclude NI from the scope of the proposed market study.

4.13 However, we will work also with the OFT’s representative for Scotland, Wales and Northern Ireland to ensure that our findings and recommendations are shared.

**What we plan to exclude from scope**

4.14 It is proposed, subject to views received, to exclude from scope the following:

- commercial (as opposed to residential) property management services
- services provided by registered providers of social housing (councils and housing associations, because they will be largely responding to the needs of the residents who have not purchased their properties)
- letting agents
- dwellings that are not occupied under a long lease arrangement
- single properties (where agents are unlikely to be required)
- land management services
- an assessment of the legal framework that underpins freehold and leasehold arrangements in England and Wales (we will consider the leasehold and freehold relationship, but only insofar as it impacts on the supply of property management services)
- consideration of the regulation of service charges
- consideration of retirement property issues which are not directly related to property management.
5 INFORMATION ON HOW TO RESPOND TO THIS SCOPING PAPER

Invitation to comment and next steps

5.1 The OFT would welcome written comments on the proposed scope of the market study from a wide range of interested parties by xx January 2014.

5.2 We plan to launch our study with a finalised scope in early 2014. Thereafter, the first phase of the project is expected to last until early summer, during which time we will meet with, and gather and assess evidence from, interested parties. The final duration and scope of the project will depend on the outcome of this first phase, and we plan to issue a progress statement in the Summer. The market study is expected to be completed by the end of 2014.

5.3 Additional information about this study, including information on next steps and timing will be added to the Residential Property Management Market Study webpage on the OFT’s website (and subsequent to the closure of the OFT in March 2014, on the CMA’s website) on a regular basis.

5.4 In addition to the issues raised in this document, we would welcome comments on:

• whether there are any additional issues which should be addressed in this market study
• whether there are certain issues, products, or geographic areas to which the market study should give more or less attention than others.

5.5 Interested parties can submit their comments by email by 17 January 2014 to propertymanagers.study@oft.gsi.gov.uk, or write to us at:

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8 www.of.t.gov.uk/OFTwork/markets-work/residential-property-management
5.6 Respondents are asked to supply a brief summary of the interests or organisations they represent, where appropriate.

Disclosure of information provided to the OFT

5.7 The OFT would like to make interested parties aware that it may choose to disclose information that it obtains during the course of this review, including as a result of this invitation to comment. It may also publish it in any document we produce at the end of this review. In deciding whether to do so the OFT will have regard, in accordance with its statutory duties under Part 9 of the Enterprise Act 2002, to the need for excluding, so far as that is practicable, any commercial information relating to a business or any information relating to the private affairs of an individual which, if published, the OFT thinks might significantly harm the legitimate business interests of that business or, as the case may be, the individual's interests (referred to individually and collectively as 'confidential information').

5.8 If you should consider that the information that you will provide contains such confidential information, you should identify each separate item (for example, individual data) or category of information (for example, a row or column of data in a spreadsheet) and explain in each case why you consider it is confidential by reference to the above test - blanket requests for confidential treatment (for example, the entire submission) will not be sufficient. In the event that the OFT proposes to include any sensitive commercial or personal information in a document that will be published it will, save in exceptional circumstances, contact the relevant persons prior to publication to give them the opportunity to explain why disclosure would cause significant harm and to request excision (or aggregation or generalisation) of any material that will still be sensitive at the time of publication.
5.9 The OFT is also bound by the Freedom of Information Act 2000 (the 'FoIA'). Where a person makes a request in accordance with the FoIA the OFT may have to disclose whether it holds the information sought and the information itself (including confidential information). The FoIA contains exemptions (including one which may exempt confidential information) and the OFT will not have to make those disclosures if an exemption applies. If you consider that any information you provide may be exempt from such disclosures you should say so and explain why. Similarly, to the extent that information you provide constitutes personal data under the Data Protection Act 1998, the OFT will process such data in accordance with that Act.

5.10 The OFT reserves the right to disclose any information it obtain (including confidential information) as may be permitted or required by the Enterprise Act 2002 or any other enactment.