

# Residential property management services: a market study

## Implementation of the CMA's recommendations

### Introduction

1. The Competition and Markets Authority (CMA) carried out a market study in to the supply of residential property management services (RPMS) in England and Wales, publishing its findings and recommendations in December 2014. This document reports on the progress that has been made in the implementation of our recommendations.
2. In our market study, we found that overall, while the market worked well for many leaseholders, some leaseholders had experienced significant problems. The main issues identified included leaseholder frustration at a lack of control over the appointment of property managers, high charges or poor standards for services arranged by property managers, leaseholders suffering unexpected costs and being charged for works they considered unnecessary, poor communication and transparency between property managers and leaseholders, and difficulties in getting redress. We also identified some concerns about prospective purchasers' understanding of leasehold, and their obligations and service charge liabilities for leasehold flats.
3. We made a number of recommendations aimed at improving:
  - prospective purchasers' awareness of leaseholders' obligations;
  - disclosure, transparency and communication between property managers and leaseholders; and
  - leaseholders' access to appropriate forms of redress.
4. Full details of our findings and recommendations can be found in the [market study report](#).
5. In his [response](#) to our recommendations in March 2015, the Minister of State for Housing and Planning, Brandon Lewis MP (the Minister), welcomed the market study, agreeing that improvements could be made to the provision of residential property management services and indicating that the Department for Communities and Local Government (DCLG) would be taking forward the majority of the recommendations made.

6. Specifically, the Minister said that DCLG would:

- ask the Leasehold Advisory Service (LEASE) to lead on the development of an information sheet for prospective purchasers to enable them to make informed decisions;
- continue to work with Code Owners on CMA recommendations relating to the Code of Practice approved by the Secretary of State, to be approved by April 2016;
- encourage the continual development of the non-statutory codes and industry standards;
- issue a consultation on amending the prescribed content of the existing summaries of rights and obligations, to include a message about the government-approved redress schemes (that commenced 1 October 2014);
- work closely with the Ministry of Justice and the First Tier Tribunal (Property Chamber) to consider what further improvements can be made for early dispute resolution in the Property Chamber;
- consider how to incentivise the take-up of mediation in property disputes and provide an update on progress in 12 months;
- in relation to the recommendation requiring legislative change, set up a cross-sector working group, made up of professionals from across the sector and organisations representing the interests of leaseholders, to consider both legislative and non-legislative options to increase competition and to provide an update on progress within 12 months;
- in relation to section 20 rules,<sup>1</sup> consider reviewing:
  - the qualifying works threshold of £250;
  - any further changes to section 20 that might be required (in conjunction with the Association of Residential Managing Agents (ARMA) and LEASE);

and report back on progress in 12 months;

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<sup>1</sup> Landlord and Tenant Act 1985.

- raise the sharing of best practice initiative, in relation to the local authority sector, with the relevant bodies; and
  - issue a consultation in relation to local authorities on the issue of separate costs of providing ‘common’ services to leaseholders and social renting tenants on a block basis and draw the CMA’s market study Report to the attention of the Homes and Communities Agency.
7. Since March 2015, we have been working with both the government and representative industry bodies to implement as fully as possible the recommendations that were made. This update provides an overview of what has been achieved to date and what further work remains in progress.

## **Pre-purchase remedies**

### ***Recommendation 1***

8. We recommended that when specific enquiries are made about a property the estate agent provides a short information sheet providing basic key information on major facts about leasehold ownership.
9. In response to this recommendation, LEASE has produced – with input from the Law Society – a one-page information sheet for handing out to prospective purchasers. In addition, it has also produced a more detailed two-page information sheet. Both information sheets are available on the LEASE website.<sup>2</sup>
10. Following the production of these information sheets, the positive feedback received suggests that there is demand for further adaptations of the information sheets to cover more specific forms of tenure, such as shared ownership and retirement flats. LEASE is currently working to develop further variants of the information sheets.
11. LEASE has also engaged with the Department for Business, Innovation and Skills (BIS), The Property Ombudsman and the National Association of Estate Agents with regard to the distribution and dissemination of the one-page information sheet. Discussions have also taken place with property developer and housing association organisations to ensure whole market coverage for distribution of the leaflet.

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<sup>2</sup> [‘Things to know before you buy a flat’](#) (one page) and [‘Thinking of buying a flat?’](#) (two page).

## ***Recommendation 2***

12. We recommended that the leasehold property particulars prepared by estate agents should state the current level of service charges and that a requirement to provide this information should be incorporated into the approved code of practice followed by estate agents and the associated guidance that supports it.
13. The Property Ombudsman has amended its Code of Practice for Residential Estate Agents (England, Wales and Northern Ireland) with effect from 1 October 2015. The relevant paragraph in the Code states:

### Published Material and Information about a Property

7k. In regard to leasehold properties, you should include basic key information such as service charges; ground rent; the length of years remaining on the lease; any known special conditions and advise sellers and prospective purchasers that there may be additional fees that could be incurred for items such as leasehold packs. In relation to sheltered housing, you should include in sales particulars the existence and level (if known) of event fees.

## ***Recommendation 3***

14. We recommended that a standard set of questions is used as part of the conveyancing process to ensure that the prospective leaseholder has sufficient information to make an informed decision on the purchase. We said that this may be achieved by wider adoption of the Leasehold Property Enquiries form 1 (LPE1) which was created through a working group of representative bodies from the leasehold and legal sector. In addition, we recommended that conveyancers also distribute the short information sheet on major facts about leasehold ownership.
15. The LPE1 working group has now revised LPE1. Those involved in the review included the Law Society, Conveyancing Association, British Property Federation, the Royal Institution of Chartered Surveyors and the Association of Residential Managing Agents. The second edition of the LPE1 form was released on 1 October 2015 along with the introduction of a buyers' leasehold information summary (LPE2).
16. The amendments made to LPE1:
  - reflect changes in the Association of British Insurer agreements with lenders;

- provide better definitions and general wording; and
  - include new questions aimed to reduce the need for additional enquiries, for example with regard to any transfer fees payable on sale.
17. In addition, a buyers' leasehold information summary (LPE2) has been introduced. This summary improves the information given to buyers of leasehold property about their financial obligations as a leaseholder.
  18. We have been informed by the LPE1 working group that some 1,800 law firms now have access to the LPE1 and LPE2 through Laser form and Oyez software which is also integrated into their case management systems. In recent surveys conducted by the Conveyancing Association, 67% of lease administrators reported that over 75% of enquiries are now raised on the form, though only 37% of conveyancers reported that over 75% of responses arrive on the LPE1. Further, we understand that the initial feedback to their introduction has been positive, with 56% of lease administrators and 88% of conveyancers in the same surveys reporting that it makes the process easier. Those reporting that it does not make the process easier point to the fact that lease administrators still prefer to use their own standard packs. Some further revisions are in prospect with users suggesting that the forms could be combined into one PDF.
  19. Various lease administrator and trade associations – such as ARMA, the Chartered Institute of Legal Executives, the Institute of Residential Property Management, the Right to Manage Federation Limited, Leaseholder Association, the Conveyancing Association, HomeOwners Alliance and the Association of Retirement Home Managers – have added the forms onto their websites. Other potential distribution routes for LPE1 and LPE2 are also being lobbied by the LPE1 Working Group.

## **Remedies to improve transparency and communication, to be addressed via self-regulatory industry codes of practice**

### ***Recommendation 4***

20. We recommended that industry codes of practice are updated to include the following measures to improve transparency and communication. We recommended that property managers:
  - produce a clear statement to be provided to the leaseholder for each property they manage stating the: (i) purpose and responsibilities of the property manager, (ii) property management plans and strategy, and (iii) the key information relating to past work;

- disclose what is included (i) within the core management fee and rates of management charges, (ii) administration and supplementary charges, and (iii) commissions (including commissions earned by the property manager for arranging the buildings insurance);
  - disclose to leaseholders in the building any corporate relationship with the landlord for any property it manages, or with any contractors the property manager engages for work in the building, or with any company providing or assisting in the procurement or administration of the insurance; and
  - have a plan and strategy for regular communication and engagement with leaseholders to explain and discuss the decisions affecting them.
21. The CMA findings and recommendation have informed DCLG's review of the two Statutory Codes of Practice, and a significant number of the issues and concerns raised by the report have influenced and been incorporated into the Codes. DCLG has been working with the Association of Retirement Home Managers and the Royal Institute of Chartered Surveyors on updating their respective codes, and revised documents are in hand and expected to be ready for publication in early summer 2016 once parliamentary processes are complete.
22. With regard to the non-statutory Codes, ARMA is the leading trade association for residential managing agents in England and Wales. ARMA commenced its ARMA-Q scheme with effect from 1 January 2015. ARMA-Q is its new self-regulatory regime for ARMA managing agents. Its purpose is to raise standards and quality of service across the residential leasehold management sector.
23. All of ARMA's members were required to sign up to and be accredited to the new standards as a condition of continued membership. The majority of ARMA's 300 pre-existing members have now achieved accreditation by demonstrating compliance with the ARMA-Q Standards. We understand that the volume of enquiries from potential new ARMA members has grown since ARMA-Q was introduced (over 100). At the time of publication of this update ARMA has accredited [eight] new firms and has a further [16] applications in process. Work on the first revision of the Standards is planned to start in summer 2016 and will have regard to CMA recommendations to see what further improvements can be delivered.
24. The Associated Retirement Community Operators (ARCO), the trade association for providers of housing-with-care developments for older people, introduced its Consumer Code in September 2015. All ARCO members have to commit to compliance with the Consumer Code and its associated

framework. This includes regular external assessments against the Code. The Code covers a wide range of areas including advertising, marketing, contracts and ongoing relationships with consumers as most ARCO members operate closely integrated business models covering development, property management, sales and re-sales and care and hospitality services.

25. One of the requirements includes a commitment by ARCO members to hand out Key Facts sheets to prospective purchasers, which list all financial items such as the service charge, event fees and other admin charges, but also costs for care to purchased. ARCO members need to sign up to continuous assessments, aimed at ensuring that standards are not only laid down on paper, but also enforced by robust self-regulation.
26. Although still a new framework, ARCO has, we understand, received many applications for membership from new organisations wanting to enter the sector and operate under the Consumer Code. This suggests that the ability to demonstrate adherence to high standards for integrated operators through adherence to the Consumer Code is a valuable marketing tool for both existing and prospective ARCO members.

## **Remedies requiring legislative change**

### ***Recommendation 5***

27. We recommended new powers that would require the landlord to re-tender for a new property management company in circumstances where more than 50% of all leaseholders support re-tendering (we noted that some exemption may be needed for providers of integrated development/management and care schemes).
28. The Minister of State for Housing and Planning considered that there were strong policy reasons for not taking forward this particular recommendation. In summary, the Minister considered that the existing rights and protections, in particular the Right to Manage, were sufficient to address the CMA's concerns. The Minister said that DCLG would set up a cross-sector working group to understand the evidence that drove this recommendation, and to consider both legislative and non-legislative options to increase competition without adding disproportionate burdens and costs.
29. Further discussions were held between DCLG and the CMA. DCLG's position was that the rights and protections, such as the Right to Manage (RTM), in combination with improvements that may result following the consultation on the recognition of tenants' associations, should be given time to bed in before more radical legislative options be considered. In addition, DCLG was mindful

that the requirements on property managers to be a member of an approved redress scheme have only been in operation since October 2014. On a more practical note, the government's current housing priorities suggest that primary legislation in this area in the short to medium term would be unlikely to be a priority.

30. The CMA reserves its position to revisit this recommendation if the RTM, tenant association and approved redress schemes do not prove effective in improving the competitiveness of the industry.

### ***Recommendation 6***

31. We recommended that DCLG review/revise section 20 of the Landlord and Tenant Act 1985 because of concerns that it was not working as well as it should and may be imposing unnecessary costs and delaying necessary works.
32. ARMA has undertaken a survey of its membership to identify areas of concern with section 20, as well as seeking views on the consultation thresholds that have not been revised since their introduction in September 2003. As well as a survey of its members, ARMA has hosted a number of industry roundtables, made up of a representative cross-section of the industry, government and leaseholder representative bodies. ARMA has also carried out a survey of its members to provide data for an impact assessment of possible changes to section 20 for submission to DCLG.
33. The results of the work led by ARMA will be fed back to DCLG and will inform the DCLG priorities with regard to revising section 20.

## **Remedies to improve transparency and communication in blocks owned by local authorities and housing associations**

### ***Recommendation 7***

34. We recommended that local authorities should develop mechanisms to share best practice in working with leaseholders. DCLG will work with the Chartered Institute of Housing, National Housing Federation and Local Government Association to use a range of approaches, including peer support, to share best practice on improving communication with leaseholders in blocks owned by local authorities and housing associations.



## ***Recommendation 8***

35. We recommended that both local authorities and housing associations should separate out the costs, as far as practicable, of providing services to leaseholders and social rental tenants, to make clear the costs that are being incurred by leaseholders for common services and to explain the allocation of costs in an accessible way. DCLG will work with the Homes and Communities Agency and Local Government Association to scope proposals for a consultation later this year. DCLG has highlighted that expenditure pressures may impact on how this recommendation will be implemented.

## **Redress remedies**

### ***Recommendation 9***

36. We recommended the provision either of independent advice to the parties about the merits or otherwise of their case, or some form of alternative dispute resolution (either early neutral evaluation, mediation or other), separate from the current First Tier (Property) Tribunal (FTT) process, for certain categories of complaint.
37. Where such communication is not working effectively or where the relationship has broken down, leaseholders can already access free, impartial advice from LEASE. Where the issue is based on simple misunderstandings between the parties, possibly in relation to inadequate disclosure or explanation relevant to the service charge or a leaseholder's misunderstanding of their obligations under the property lease, LEASE can also be of direct assistance. Where the issue cannot be resolved in this way, LEASE can advise how the issue might best be pursued, either through escalation to The Property Ombudsman or the FTT. Our concern was that too many issues, which may be disproportionate in terms of the time and cost that are involved, may be being dealt with by the The Property Ombudsman or FTT.
38. Given this, LEASE is currently working on developing complaints guidance which sets out clearly what routes of redress are available to leaseholders with issues or disputes and the most appropriate means of seeking to resolve them. LEASE is developing a flow chart that will explain and set out clearly the most cost-effective and appropriate routes to obtaining resolution in relation to different complaint and dispute scenarios. This will be published on its website.
39. We did not identify any significant gaps in the current redress options available in respect of residential property management related disputes. We did, however, consider that there was potential to strengthen them further

and, in particular, we noted that mediation or early neutral evaluation may be useful additions in terms of more effective dispute resolution and could potentially reduce costs (and the inherent risks of pursuing a complaint through other redress options).

40. LEASE is currently piloting mediation and early neutral evaluation (by way of online dispute resolution) for a number of Housing Association members of the National Leasehold Group. A mediation session has already been successfully conducted and this service will be extended to all areas. LEASE is also working to introduce a new service designed to help provide resolution to manager/leaseholder arguments that are the results of misunderstandings or poor communication that can nevertheless be very time consuming to resolve (and can end up escalating out of proportion to the actual detriment).

## **Implementation in Wales**

41. Many of the recommendations, such as in relation to pre-purchase and the various non-statutory Codes, will also have effect in Wales and, as such, do not require any separate implementation to be brought into effect. However, other parts of the recommendations package, such as in relation to legislative change and redress, will require the input from the Welsh Government.
42. In this context, Lesley Griffiths AC/AM, Minister for Communities and Tackling Poverty, said in the [Welsh Government's](#) response to the CMA's recommendations that it would be looking at potential improvements to leasehold based on our recommendations.
43. The Welsh Government hopes to begin, on a trial basis, a mediation service for leasehold disputes across Wales. The service will be offered by LEASE. While the final decision will be dependent on 2016/17 final budgets, it is hoped that agreement will be made for the service to begin in 2016.
44. Potential changes to legislation, such as giving leaseholders rights to force re-tendering and to veto the landlord's choice of property manager and the review of section 20 rules, will be considered by the next government formed after the Assembly elections on 5 May 2016.

## **Concluding remarks**

45. As we noted in our market study report, the success of our recommendations depends on their effectiveness in delivering the intended benefits and positive change in the market, in conjunction with other changes being undertaken in the market.

46. As an illustration of such change, LEASE is updating its website to facilitate better navigation so that guidance and information can be found and accessed more easily. Lastly, LEASE is embarking on a series of initiatives with industry bodies to develop education programmes and help improve understanding of the leasehold system of property ownership. The benefits of such work should help facilitate a better understanding of leaseholder rights, obligations and manage expectations on all sides. This in turn should help further improvement to service quality levels and improve competition between property managers.
  
47. Much has already been achieved, particularly with regard to improvements in pre-purchase information and redress, as well as the significant developments in relation to the non-statutory Codes (to be followed by DCLG approval of the statutory Codes in summer 2016). In addition, we look forward to the outcomes from DCLG's work in relation to section 20. We wish to thank all parties who assisted us during the course of our market study and subsequently in implementation of our recommendations. Publication of this update on the implementation of our recommendations marks the end of our active involvement in this area for now, as we hand over any ongoing work to government and industry.