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Housing and Communities  
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From: Sarah Cardell

*Chief Executive*

25 August 2023

Dear Secretary of State

### **Update on CMA work in housing sector**

Further to our correspondence last year, I wanted to share updates on two projects – our private rented sector consumer research and our housebuilding market study and we have today published an overview of this work and further update reports for each project on our website.

As set out in our annual plan, the CMA is prioritising outcomes which help people, businesses, and the UK economy – and a critical part of this is ensuring that competition and consumer rights are protected in relation to where people live whether they rent or own their home.

### **Consumer protection in the rented sector**

While many landlords and letting agents are providing a good service, the CMA has heard many complaints raised by stakeholders suggesting that a significant minority are not complying with consumer protection law. We will be issuing guidance to letting agents to help them understand their obligations. Additionally, our investigation will now explore the 5 areas highlighted by stakeholder complaints:

- **Zero deposit schemes:** The CMA has heard concerns that tenants may be unaware of their liabilities under such schemes, alongside reports of pressure selling and undisclosed commissions earned by letting agents.
- **Sham licences:** The CMA has been told that there are still landlords who claim that tenants have licences to occupy rather than assured tenancies and who fail to recognise the rights that consumers have under a tenancy.
- **Guarantees:** The CMA has seen examples of onerous guarantee clauses which impose wide obligations on tenants – such as requiring them to provide extensive evidence of assets.

- Activity that could constitute unlawful discrimination: This includes, for example, looking at those who advertise properties as not available to housing benefit claimants.
- Retirement housing fees: The CMA will review practices in the sector and whether some businesses are taking advantage of elderly consumers.

## Housebuilding market study

As you will be aware, we launched our market study early this year to understand whether the housebuilding market is functioning effectively. After receiving feedback from key stakeholders in the sector – which included housebuilders of all sizes, campaign groups, councils, and devolved administrations – the CMA will now look at 5 areas in greater detail as the market study progresses:

- Estate management charges: Evidence has shown a significant number of new housing estates built over the last 5 years have not been taken on (a process known as adoption) by their local authority – meaning homeowners are required to pay a private management company to maintain amenities such as roads, parks, and street lighting. This has led to concerns about high or uncapped charges for owners and the quality of work carried out in maintaining these amenities.
- Land banks: Analysis of the housing market shows the largest builders in the UK hold large swathes of land, and that these land banks have grown in recent years, leading to concerns from some stakeholders this may be limiting competition or slowing build-out rates in some areas.
- Planning rules: Concerns expressed by some stakeholders suggest that complex planning rules and uncertainty of decision making were hindering the delivery of new homes – particularly for smaller housebuilders that have less resources to help manage the planning process.
- Competition between builders: The market study has found that, at the national level, the housebuilding market does not appear to be particularly concentrated, with a number of large housebuilders competing alongside smaller, regional firms. The CMA is now considering the number of competitors in particular areas and the extent to which small and medium sized housebuilders are able to compete in these local markets.
- Barriers for new businesses wanting to build homes: The CMA has heard concerns about barriers facing small and medium sized builders and the particular issues they face when delivering new homes (for example, access to land).

The CMA will investigate each of these issues further – while considering the economic conditions affecting the sector – and will provide updates on its work later in the autumn. This will include publishing working papers on estate management charges, land banks, and planning rules. We will conclude the market study by 27 February 2024 at the latest.

At this stage, we have identified two areas of concern where there may be a basis for an MIR. In line with our legal obligations, as recently interpreted in a judgment from the Competition Appeal Tribunal<sup>1</sup>, we are today launching a consultation to seek market participants' input with regard to possibility of an MIR in relation to the private management

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<sup>1</sup> The recent judgment of the Competition Appeal Tribunal (CAT) in *Apple v CMA* was an important factor in our decision to launch a consultation. In this judgment, the CAT made clear that, where the CMA decides at six months not to make a MIR, it cannot (subject to some very narrow exceptions) revisit that decision should subsequent evidence or developments come to light in the second half of the market study. The CMA is currently appealing this judgment.

of public amenities on new-build estates and the land banks controlled by the largest housebuilders. In the second half of the study we will investigate further the extent to which these features of the market are having a negative effect on competition, with negative outcomes for consumers. Importantly, we will also consider whether an MIR is the most appropriate way to address those concerns or whether there are more effective alternatives such as recommendations to government for legislative change.

If we find that our concerns about how the market is operating are mainly the result of deficiencies in the legal framework (in this case, most likely the planning system and the framework for local authority adoption of public amenities/the lack of regulatory protection for freeholders on estates with amenities managed by private providers) then recommendations to government may well be the best way to secure the change needed to improve outcomes in the market for consumers, businesses and the wider economy. If on the other hand, we find that our concerns are primarily driven by the way firms are competing, then an MIR may be the most effective way to deal with those concerns. If there are issues with how competition is working in the market, we will also consider other potential action we can take, such as recommendations to business, giving guidance to consumers or, in the event that we find any evidence of action contrary to consumer or competition law, taking enforcement action.

As noted above, our work both in private rentals and housebuilding remains a priority for the CMA and we will be providing further public updates in the Autumn.

Best regards

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