



# Competition & Markets Authority

*Private management of public amenities  
on housing estates working paper*

*Response From*

**The Property Ombudsman**

(23 November 2023)



## 1. ABOUT OUR RESPONSE

[REDACTED]  
[REDACTED]  
**Organisation:** The Property Ombudsman (TPO)  
[REDACTED]  
[REDACTED]

**Details about TPO and TPOs credentials can be found at the end of this document in Appendix 1 & 2.**

## 2. INTRODUCTION AND RECOMMENDATIONS

- 2.1 Over the past ten years, just under 2 million new dwellings have been built in the UK in the private sector<sup>1</sup>. Whilst data depicting the breakdown of leasehold and freehold dwellings is not readily available, freeholders and leaseholders will only have access to redress should issues arise with their estate management agent if that agent has voluntarily chosen to join a redress scheme. This gap in redress is significant and leaves those living in freehold properties without access to justice. TPO supports the Competition & Markets Authority's (CMA) suggestion to implement redress for freehold estate management agents consumers.

As identified in point 3.190 of the working paper, TPO provides redress to some freeholders using estate management businesses<sup>2</sup> representing approximately 47,500 properties<sup>34</sup>. These estate management businesses have voluntarily signed up to redress with TPO, ensuring freeholders have access to redress. While it is encouraging to see estate management businesses signing up for voluntary redress, it does not give all freeholders access to redress. TPO is happy to discuss its experience of providing estate management redress with the CMA to help further inform thinking in this area.

- 2.2 Under Government legislation, it is mandatory for all estate agents, letting agents, and leasehold managing agents to be registered with one of the two government-approved redress schemes. In considering estate management agents' work, many of the services provided are the same as traditional agency work where mandatory

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<sup>1</sup> <https://www.gov.uk/government/statistics/housing-supply-indicators-of-new-supply-england-april-to-june-2022>

<sup>2</sup> <https://www.tpos.co.uk/about-us/who-we-work-with-sla>

<sup>3</sup> <https://thelandtrust.org.uk/>

<sup>4</sup> <https://www.meadfleet.co.uk/>



redress is required. TPO considers that as estate management agents undertake agency management functions, it would be sensible to include estate management agents under the mandatory requirements for redress. This sentiment has also recently been echoed within the King's Speech, with commitments outlined to grant freehold homeowners on private and mixed tenure estates the same rights of redress leaseholders<sup>5</sup>. TPO supports this commitment and awaits further details to be set out in the upcoming Leasehold and Freehold Reform Bill.

- 2.3 In response to the questions set out by the CMA, TPO is unable to provide evidence-based comment on some of the matters set out in this working paper; however, we have taken the opportunity to respond to questions 5,6 and 7 as set out in the section below.

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<sup>5</sup>[https://assets.publishing.service.gov.uk/media/654a21952f045e001214dcd7/The King s Speech background briefing notes.pdf](https://assets.publishing.service.gov.uk/media/654a21952f045e001214dcd7/The_King_s_Speech_background_briefing_notes.pdf)



### 3. TPO CALL FOR EVIDENCE RESPONSE FORM

#### POSSIBLE MEASURE TO ADDRESS OUR EMERGING CONCERNS

**3.1 Question 5a: What measure, or combination of measures, would provide the best solution to our emerging concerns? Please give reasons for your views. Question 5b: Does the best approach to tackling our emerging concerns differ according to the amenity (eg roads versus public spaces) or by nation? Question 5c: Are there any options that may be more effective in addressing our emerging concerns than those that we have proposed?**

Alongside allowing freeholders to challenge charges via the First Tier Tribunal (FTT), TPO would suggest the combination of mandatory redress requirements for estate management companies via an Ombudsman scheme and a sector-specific code of practice, which would significantly assist in addressing and reducing the emerging concerns set out in the working paper.

Improving trust and confidence in the estate management sector will be vital going forward, particularly for freeholders within newly built estates who have been affected by poor quality of service previously and reasonable expectations not being met. Where those reasonable expectations are not met, consumers should feel confident in being able to challenge poor standards and poor service. Here, the role of an independent Ombudsman becomes an important part of the justice landscape. In this respect, an independent Ombudsman for the sector would not just provide a mechanism to resolve disputes but would also offer a number of additional services that provide significant and tangible benefits to all stakeholders, such as:

- A front-end enquiry service to help inform freeholders and resolve issues quickly before they turn into disputes.
- Balanced, proportional and fair redress to freeholders where estate management agents have not resolved issues.
- Referral of cases where evidence of a breach of legal obligations has occurred to local authority enforcement agencies.
- Feedback the learning from investigations and enquiries to the estate management sector to help improve property and service standards.
- Feedback data and insight on trends and emerging issues to inform policymakers and potential updates to the sector's code of practice.



- Feedback learning, data and insight on trends and emerging issues to inform policymakers to regularly provide the type of information that the working paper is reaching for.

In addition to an independent Ombudsman scheme, TPO would suggest the implementation of a sector-specific statutory Code of Practice where possible. This code could sit under an overarching code of practice for all residential agency businesses that outlines general principles and compliance, with the more detailed sector-specific code providing practical and measurable standards for the estate management sector. TPO would recommend that a regulator would be the most appropriate body to own and oversee a code of practice; however, in the absence of a regulator, this could be owned by the Department of Levelling Up, Housing & Communities.

The code of practice would show what 'good' looks like to estate management agents and provide clear standards for the disclosure of information, service charges and, complaints and disputes. The code should also provide clear guidance to estate management agents to help them provide a good and transparent service and bring together all of the relevant legal provisions and best practice standards in one place to include obligations concerning:

- Transparency of estate management arrangements and charges
- Communication of estate management charges and potential for future charges
- Estate management services provided
- Practices and arrangements
- Complaints handling and the rights to challenge estate management arrangements and fees.
- Provisions for consumers to have the ability to switch estate management companies

TPO has provided an Ombudsman scheme for over 30 years as well as successfully operating Codes of Practice for 20 years, and would be happy to speak to the CMA on these matters to provide the benefit of our experience.



- 3.2 Question 6a: Would enhanced consumer protection measures by themselves provide sufficient protection for households, or would mandatory adoption also be necessary to achieve a comprehensive solution to the detriment experienced by households living under private estate management arrangements?**
- Question 6b: Are there any other measures that are required to provide adequate protection to households living under private estate management arrangements?**
- Question 6c: Do the protections afforded to households in Scotland by virtue of the Property Factors (Scotland) Act 2011 provide adequate protection, in accordance with the principles outlined above.**
- Question 6d: Should such measures be implemented by the UK, Scottish and Welsh governments, as appropriate, or by the CMA following the conclusion of a market investigation? Please explain why, and whether this differs by nation.**

As outlined in 3.1 (question 5a-c), TPO recommends that enhanced consumer protection measures, such as the implementation of an independent Ombudsman and a sector-specific Code of Practice, would assist towards addressing the emerging concerns detailed in the working paper and provide protection for households. TPO is unable to make an evidence-based comment on whether mandatory adoption would also be necessary, although we would emphasise that mandatory adoption would create a level playing field and reduce the potential for freeholder confusion.

TPO is aware that there will be instances (for example, challenging the amount of service charges) where the independent Ombudsman is unable to consider areas of the dispute, and these would need to be addressed by a different body, such as the FTT. In cases where this occurs, it would be necessary to ensure robust advice, guidance, and signposting between relevant bodies is in place to ensure consumers have efficient and appropriate access to justice; TPO would suggest here that a front-end property portal would be appropriate. Consideration should also be taken towards a collaborative approach where the issues in dispute span the remit of more than one body. TPO has undertaken a pilot scheme with the FTT to improve this collaborative approach between tribunals and ombudsman schemes, and TPO would be happy to discuss the outcomes of this pilot with the CMA.



**3.3 Question 7a: Would the determination of common, adoptable standards support an increase in the adoption of amenities by local authorities? Question 7b: Are there existing standards that could be used to support the determination of common adoptable standards? Question 7c: Who should be responsible for determining and enforcing common adoptable standards? Question 7d: Should this option only apply to future housing estates or include existing housing estates? If the latter, how and over what timescale could existing infrastructure be brought up to the agreed common standard?**

TPO would be supportive of common adoptable standards. As outlined in 3.1 (question 5a-c), a sector-specific code of practice would outline set standards to adhere to. In the absence of a regulator, TPO would suggest enforcement action be undertaken by local authorities with adequate funding provided where necessary for each authority to undertake sufficient enforcement activity on these matters.

## **4. CONCLUSION**

4.1 TPO would strongly urge the CMA to consider an approach which provides collaboration between the sector Ombudsmen and the First Tier Tribunal to address estate management issues raised by freeholders. Further strengthening this approach, TPO would encourage the consideration of a Code of Practice to improve standards across the estate management sector. TPO is happy to discuss further with the CMA how this approach could work practically, given our relevant experience in these matters, in addition to our experience of dealing with complaints against the estate management agents who are members of TPO.



## APPENDIX 1: ABOUT THE PROPERTY OMBUDSMAN

1.1 The Property Ombudsman (TPO) has been resolving disputes between consumers and property businesses since 1990. TPO's skilled workforce provide an ombudsman service to consumers for property sales, lettings, residential leasehold management, search organisations, chattels auctions, buying agents, buying companies, landlords, surveyors, international and commercial property.

1.2 TPO is an independently governed 'not for profit' organisation. There is no cost to the consumer or the taxpayer and any surplus income is invested back into providing the additional functions required of an Ombudsman service and service improvement.

1.3 TPO is an independent ombudsman, meaning it represents neither the industry nor the consumer nor has any commercial interest in businesses offering property-related services to consumers or industry.

1.4 In 2022, The Property Ombudsman:

- Helped 44,492 people, providing advice, guidance and signposting relevant to their issue
- Resolved 6,012 complaint cases, 2,246 through facilitated early resolution
- Made 2,684 financial awards totalling £1.45 million
- Ensured a 99% business compliance rate with awards

1.5 As at December 2022, there were 38,846 TPO member business offering agency and property related services to landlord, tenants, buyers, sellers, leaseholders and freeholders. Additionally, TPO provides voluntary service level agreement redress to open space management organisations.

1.6 Further information on our credentials and information on our membership is set out in Appendix 2





## APPENDIX 2: TPO CREDENTIALS & MEMBERSHIP FIGURES

- Validated by and a full member of the Ombudsman Association<sup>6</sup>
- Approved by the Department for Levelling Up, Housing and Communities (DLUHC) as a provider for letting and managing agent redress under the Enterprise and Regulatory Reform Act 2013<sup>7</sup>
- Approved by the National Trading Standards Estate and Letting Agency Team (NTSELAT) under the Consumers, Estate Agents and Redress Act 2007<sup>8</sup>
- Approved by NTSELAT and Chartered Institute of Trading Standards (CTSI) as an ADR body under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015<sup>9</sup>
- Codes of Practice approved by CTSI's Consumer Codes Approval Scheme (CCAS)<sup>10</sup>

TPO has been successfully operating Codes of Practice for 20 years. TPO's Codes set out the professional and other standards expected of agents who have agreed to follow those obligations. TPO's Letting Agent and Estate Agent Codes are the largest codes approved by CTSI's CCAS.

In December 2022, TPO had a total of 38,846 members operating from 19905 offices and branches:

- Sales: 15,124 members across 9,362 companies and 5,762 branches.
- Lettings: 12954 members across 8325 companies and 4629 branches.
- Residential Leasehold Management: 1,501 members across 1,017 companies and 484 branches.
- Other Property Related Jurisdictions: 9267 members across 7606 companies and 1661 branches.

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<sup>6</sup> [Ombudsman Association | Ombudsman Association](#)

<sup>7</sup> [Registering with a redress scheme as a property agent - GOV.UK \(www.gov.uk\)](#)

<sup>8</sup> [Registering with a redress scheme as a property agent - GOV.UK \(www.gov.uk\)](#)

<sup>9</sup> <https://www.tradingstandards.uk/consumer-help/adr-approved-bodies/>

<sup>10</sup> <https://www.tradingstandards.uk/business-hub/consumer-codes-approval-scheme/code-sponsors/>