



# HOUSE OF LORDS

Industry and Regulators Committee

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22 March 2024

Rt Hon Michael Gove MP  
Secretary of State for Levelling Up, Housing and Communities  
Department for Levelling Up, Housing and Communities  
2 Marsham St  
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Dear Secretary of State,

I am writing to you following the Industry and Regulators Committee's short inquiry into the regulation of property agents. We requested, and would have appreciated, hearing oral evidence from a minister from your department on this subject during the inquiry.

The Government has previously recognised the case for addressing the “overwhelming evidence of the harm that some people experience” when dealing with letting agents and managing agents in 2017, when it first proposed introducing regulation of property agents to protect leaseholders and tenants in the private rented sector. The Government's call for evidence on the issue argued that a “lack of minimum standards has allowed unscrupulous agents to enter the market” as “anyone can become a property agent regardless of their background, skills or experience”.<sup>1</sup> In its response to that call for evidence, the Government clarified its commitment to extend regulation to letting agents and managing agents through a single, mandatory and legally enforceable Code of Practice to be operated by an independent regulator.<sup>2</sup>

The Government then established a Working Group on the Regulation of Property Agents<sup>3</sup>, chaired by one of our members, Lord Best. The Working Group published its final report in July 2019, setting out in detail how it envisaged the operations of the proposed new regulator. These would include operating a licence for property agents and setting mandatory codes of practice and qualifications as conditions of that licence.<sup>4</sup>

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<sup>1</sup> Ministry of Housing, Communities and Local Government, [Protecting consumers in the letting and managing agent market: call for evidence](#) (October 2017)

<sup>2</sup> Ministry of Housing, Communities and Local Government, [Protecting consumers in the letting and managing agent market: government response](#) (April 2018)

<sup>3</sup> There are three main categories of property agents, all of which are intermediaries: sales agents (commonly referred to as estate agents), who act as agents in the buying and selling of property; letting agents, who play a role in renting out property, and sometimes in the ongoing management of rented property; and managing agents, who manage leasehold properties, usually on behalf of the freeholder. We heard during our inquiry that “there are a lot of crossovers” between types of property agents – for example, estate agents can also act as letting agents and managing agents. See [Q 29](#) (Alison Farrar)

<sup>4</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

Over the course of nearly five years since the Working Group's report, the Government has not provided a response to it or outlined whether it continues to believe that property agents should be regulated. As recently as October 2023, the previous Housing Minister asserted that the Government is "considering the recommendations" in the report.<sup>5</sup> The current Housing Minister's more recent answer to a written question on the topic did not say whether they are even still under consideration.<sup>6</sup>

The Committee held two double evidence sessions, hearing from campaigners for private sector tenants and leaseholders, professional bodies representing estate agents, letting agents and managing agents, the Leasehold Advisory Service (LEASE), The Property Ombudsman and National Trading Standards. We have also received written evidence from Shelter, the National Residential Landlords Association, the Royal Institution of Chartered Surveyors and an individual leaseholder who submitted evidence anonymously.

We recognise that there are a range of serious issues in the housing sector, including the affordability of buying and renting homes, the supply of new homes and reforms to the relationship between private sector tenants and landlords. While we believe that these issues must be addressed urgently, we do not propose to try and resolve these issues in this letter or comment on them in great detail, except insofar as they are relevant to the regulation of property agents and the proposals in the Working Group's report.

The following sections of this letter outline our conclusions (in bold) and recommendations (in bold italics) following the inquiry. We will expect a response to all our conclusions and recommendations when the Department replies to this letter.

### *The case for and against regulation*

The Government's April 2018 response to a call for evidence on the subject of regulating letting and managing agents said that while "many property agents provide a good service ... the sector's size and rapid growth has attracted some agents who provide a poor service or do not provide value for money". Concern about the 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" where their service is unacceptable or where an alternative may provide better value. 84% of respondents to the call for evidence agreed that there was a need for change.<sup>7</sup>

These points were all reflected in the Working Group's final report, which argued that this lack of information and market power "can leave consumers at the mercy of substandard agents".<sup>8</sup> Conor O'Shea, Policy and Public Affairs Manager at Generation Rent, told us that private sector tenants experience issues with letting agents before, during and after their tenancies due to these "power imbalances". This included increases in letting agents encouraging or telling prospective tenants to bid above the advertised rent, or requesting multiple months' rent up front. During their tenancy, letting agents can fail to respond

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<sup>5</sup> Written Answer [HC203866](#), Session 2022-23

<sup>6</sup> Written Answer [HC2606](#), Session 2023-24

<sup>7</sup> Ministry of Housing, Communities and Local Government, [Protecting consumers in the letting and managing agent market: government response](#) (April 2018)

<sup>8</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

promptly to complaints about problems with their properties and in some instances seek “revenge evictions” in response to them. We heard that they have a “vested interest in either raising the rent or changing the tenant” in order to earn commission. Following the conclusion of a tenancy, Generation Rent said that “tenants regularly complain about spurious claims” regarding the return of their deposits.<sup>9</sup>

There are existing mechanisms for protecting consumers from poor practice by agents – notably self-regulation by the sector, two redress schemes (The Property Ombudsman and the Property Redress Scheme), and local Trading Standards. Some the Working Group had spoken to believed that “the cost of regulation would outweigh the benefits, and that consumers are adequately protected” by these existing pillars.<sup>10</sup> However, both the Working Group’s conclusions and the evidence we received emphasised that a regulator would add considerable value above and beyond existing mechanisms.

The Working Group argued that Trading Standards teams are essential in dealing with illegal behaviour by agents but emphasised that their role is reactive rather than proactive, their engagement varies geographically due to limited resources, and they are “rule-followers rather than rule-makers”, whereas a regulator would have greater ability to promote good practice and adapt its regulatory framework.<sup>11</sup>

Alison Farrar, Operations Manager for the National Trading Standards Estate and Letting Agency Team, emphasised the “need for a regulator” to provide greater consistency in the qualifications of property agents and of enforcement against them. She said that it would be “really difficult” for local authorities or Trading Standards to deliver broader regulation of property agents “without having specialist people, training and the right intelligence”.<sup>12</sup>

Since 2014, property agents have been required to be a member of a redress scheme approved by the Government.<sup>13</sup> Currently, two redress schemes have been approved for this purpose: The Property Ombudsman; and the Property Redress Scheme.<sup>14</sup> Redress schemes provide alternative dispute resolution to the courts for tenants and agents and can take on individual complaints on behalf of consumers. They can order agents to pay financial awards where they have harmed consumers, but as the Working Group noted, the value of these awards cannot exceed the individual harm done.<sup>15</sup>

The Working Group found that the redress schemes are limited by only acting where individual cases are brought by consumers; nor can they mandate that agents be qualified or adhere to a code of practice.<sup>16</sup> Luay Al-Khatib, Director of Knowledge and Practice at the

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<sup>9</sup> [QQ 2, 6](#) (Conor O’Shea)

<sup>10</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>11</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>12</sup> [QQ 31, 37](#) (Alison Farrar). See also [Q 4](#) (Conor O’Shea) and [Q 20](#) (Timothy Douglas)

<sup>13</sup> The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 ([SI 2014/2359](#))

<sup>14</sup> HM Government, [Registering with a redress scheme as a property agent](#) [accessed 4 March 2024]

<sup>15</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>16</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

Royal Institution of Chartered Surveyors, emphasised that there is “a fundamental difference between redress and regulation”, as the latter can ensure “minimum standards are met”.<sup>17</sup>

Rebecca Marsh, The Property Ombudsman, emphasised the need to protect tenants and leaseholders, particularly those who are vulnerable, “in a way that does not rely on them having to be responsible for it” by making complaints. She argued that redress schemes working on individual cases “cannot drive that cultural change” she felt the sector needed.<sup>18</sup> The Working Group agreed with the redress schemes’ view that “they cannot always solve systemic problems in the market” due to their focus on individual complaints.<sup>19</sup>

The Working Group noted that professional bodies do provide training to property agents, and some require adherence to a code of practice. It emphasised, however, that membership of these bodies is voluntary, and there is a potential for conflicts of interest where regulatory functions are not independent, as those making decisions on standards “may also have to consider the financial risk of a member opting out of the voluntary system”. The Working Group suggested that the regulator could choose to involve professional bodies in its functions, subject to certain conditions.<sup>20</sup>

Sebastian O’Kelly, CEO of the Leasehold Knowledge Partnership, a charity which campaigns on behalf of leaseholders, argued that self-regulation “has failed” and that this has been acknowledged by the trade bodies involved. He noted instances where professional bodies had been sued when they had tried to take action against agents, and where procedural failings had led to the reinstatement of agents who had been struck off.<sup>21</sup>

Luay Al-Khatib, of RICS, one of the professional bodies that operates the self-regulation in the sector, argued that “the number one challenge is that there is no consistency” as “regulation occurs where firms and individuals opt into it”.<sup>22</sup> Martin Boyd, Chair of LEASE, which provides advisory services to leaseholders, said that “those people who get away with the most are those who choose to be the least regulated, those who do not join the voluntary codes”.<sup>23</sup> Timothy Douglas, Head of Policy and Campaigns at Propertymark, another of the main professional bodies in the sector, said that there are lots of codes of practice in the sector”, which “highlights some of the lack of consistency”.<sup>24</sup>

More broadly, Generation Rent’s Conor O’Shea argued that the current regulatory framework is “inadequate” and “does not work properly”. He acknowledged that regulation “is no silver bullet” and the problems in the private rented sector “go beyond the scope of a regulator or ombudsman”. However, he argued that a regulator would “be able to address some of these concerns” and “push up the quality of work of letting agents” through the threat of “tangible action”. Asked whether the real issue was a lack of housing supply, O’Shea emphasised that “more homes need to be built” as the current situation drives high

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<sup>17</sup> [Q 22](#) (Luay Al-Khatib)

<sup>18</sup> [Q 30](#) (Rebecca Marsh). See also written evidence from Shelter ([RPA0002](#))

<sup>19</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>20</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>21</sup> [Q 12](#) (Sebastian O’Kelly)

<sup>22</sup> [Q 16](#) (Luay Al-Khatib). See also [Q 17](#) (Andrew Bulmer)

<sup>23</sup> [Q 31](#) (Martin Boyd)

<sup>24</sup> [Q 18](#) (Timothy Douglas)

rents. However, he argued that one can address both issues “in tandem” and that there is a need to find solutions to the “crisis of standards” in the sector.<sup>25</sup>

Andrew Bulmer, CEO of the Property Institute, which represents managing agents, emphasised that “there needs to be a regulator” to raise standards and ensure proper enforcement”.<sup>26</sup> Bulmer said that the “competence requirements for managing big, scary buildings have changed out of all recognition”, meaning that “a regulator should be setting the standards of competence” for those professionals and firms.<sup>27</sup> Martin Boyd said that it is “utterly ridiculous” that agents do not need any qualifications to manage “buildings that are as complex as a jumbo jet, and more expensive than a jumbo jet”.<sup>28</sup>

Witnesses from industry bodies argued that a new regulator would provide consistency, co-ordination and clarity for consumers.<sup>29</sup> Rebecca Marsh was “really taken by the fact that so many supported the idea of a regulator, both from the industry and consumers”, which she has “not seen” in any of the other sectors she has worked in.<sup>30</sup> Martin Boyd said that “there is a huge degree of consistency from the sector about wanting change to occur”, as consumers “have been left with a voluntary system that has not worked particularly well”.<sup>31</sup>

Alison Farrar noted that regulation of property agents in Scotland and Wales means that enforcement authorities know “who you are dealing with”.<sup>32</sup> Written evidence from the Royal Institution of Chartered Surveyors showed that in comparable countries such as the Republic of Ireland, Germany and Australia, property agents are licenced and must have relevant qualifications.<sup>33</sup>

Alison Farrar also contended that regulation can provide “protection for all ... involved”, including landlords and small letting agents, who “are vulnerable in this space”. She explained that they “often get conned”, and in some instances landlords and building owners have to repair damaged property “because it has been taken over as a cannabis farm” by their tenants, for example.<sup>34</sup>

The National Residential Landlords Association explained that “many landlords rely on the guidance of their agents in navigating the complexities of housing legislation”, who can “play a crucial role in explaining these changes” and need to be held to high standards in doing so. The Association supported the proposals of the Working Group, particularly in relation to codes of practice and qualifications. However, it urged the Government to ensure that any consumer protections put in place did not duplicate or contradict other requirements or “introduce a disproportionate level of additional bureaucracy and cost”.<sup>35</sup>

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<sup>25</sup> [QQ 2-3, 6-7](#) (Conor O’Shea)

<sup>26</sup> [Q 18](#) (Andrew Bulmer). See also [Q 21](#) (Timothy Douglas)

<sup>27</sup> [Q 21](#) (Andrew Bulmer). See also [Q 19](#) (Andrew Bulmer), [Q 19](#) (Timothy Douglas) and [Q 19](#) (Luay Al-Khatib)

<sup>28</sup> [QQ 30, 39](#) (Martin Boyd)

<sup>29</sup> [Q 21](#) (Luay Al-Khatib, Andrew Bulmer)

<sup>30</sup> [Q 31](#) (Rebecca Marsh)

<sup>31</sup> [Q 31](#) (Martin Boyd)

<sup>32</sup> [Q 33](#) (Alison Farrar)

<sup>33</sup> Written evidence from the Royal Institution of Chartered Surveyors ([RPA0004](#))

<sup>34</sup> [Q 38](#) (Alison Farrar)

<sup>35</sup> Written evidence from the National Residential Landlords Association ([RPA0003](#))

While some witnesses raised questions about how a new regulator would operate, how much it would cost and its interactions with existing professional bodies, none of them argued that there should not be a regulator of property agents.

**We believe that the Government and the Working Group have previously set out the case for regulation of property agents strongly. The imbalance of power between property agents and consumers has not fundamentally changed, and there remain minimal controls on who can become a property agent, despite the considerable power they hold.**

**Existing forms of self-regulation, enforcement and redress can provide value, and any new regulatory framework should look to draw on their experience and avoid duplication. However, self-regulation does not cover all agents and differs between professional associations, while current forms of enforcement and redress are reactive and limited in scope.**

**If designed correctly, a new regulator would make a significant difference by driving up standards in the sector and proactively enforcing against agents who engage in bad practice. It is notable that there is near unanimity from consumers, industry and existing bodies on the need for statutory regulation of property agents and the establishment of a new regulator to manage this regulatory framework. We do not, however, expect the introduction of a regulator to be a silver bullet or to resolve widespread dissatisfaction with the housing market, which is caused by broader structural factors.**

**It is unclear to the Committee why, having established the Working Group, the Government has not responded to or acted upon its report over four years later. This delay will undoubtedly have had real consequences for tenants, leaseholders and others, who continue to be exposed to malpractice from a sector that is regulated in an inconsistent and limited way. In their response to this letter, the Government should explain the reasons for its delay in responding to the Working Group.**

***The Government should legislate to establish regulation of property agents along the lines set out in the Working Group's report, including through the establishment of a new regulator to improve standards in the sector. In its response to this letter, the Government should state whether or not it plans to establish a regulator, and on what timescale.***

***At the very least, the Government should publish a full response to the final report of the Working Group on the Regulation of Property Agents. If the Government disagrees with the findings of the report, then it should say so publicly and set out its position, rather than leaving the sector in limbo. This published response should set out clearly what action the Government will take to improve standards in the property agency sector or explain why it feels such steps are not necessary.***

*Functions of the new regulator*

The Working Group proposed that the new regulator would operate a licence for property agents, which would include checking that they have fulfilled their legal obligations and that

they have passed a fit-and-proper person test. This would include maintaining a public record of which agents and firms are licenced.<sup>36</sup>

The Working Group recommended that all property agents would be required to adhere to a code of practice operated by the new regulator. The Working Group suggested that a “single, high-level set of principles” would apply to all property agents through statute, with more detailed regulatory codes specific to various aspects of property agency sitting underneath.<sup>37</sup>

The Working Group’s report proposed that the new regulator should have a range of options for enforcement action against those who breach these requirements, including: warnings; orders for retraining or further training; fines or compensation orders; required undertakings; modifications to licence conditions; suspension of licences; revocation of licences; and prosecution, including for unlicensed practice.<sup>38</sup>

Generation Rent’s Conor O’Shea suggested that there should be an “ethical code of practice”, outlining how property agents should ethically engage with tenants, with a particular focus on “the most vulnerable people” who live in the private rented sector.<sup>39</sup> Sebastian O’Kelly expressed support for a new regulator operating codes of practice, arguing that he would have more confidence in a code of practice provided by a regulator than in one provided by a professional body.<sup>40</sup>

Professional bodies agreed with the proposal for an overarching code of practice supplemented by sector-specific codes as “the right way to do it”.<sup>41</sup> Andrew Bulmer argued that there is “a crushing need for the simplification of codes” for block management, and that it “would make sense to amalgamate, simplify and simply have one source of truth”.<sup>42</sup>

Rebecca Marsh, The Property Ombudsman, stressed that the codes “need to cover expectations of behaviour”, as standards of behaviour and communication are “appallingly bad in a number of areas”.

In July 2020, RICS and The Property Ombudsman set up a Code of Practice Steering Group, chaired by Baroness Hayter, to develop an overarching code of conduct for property agents, which could be “handed over” to the new regulator once it is established.<sup>43</sup> A final version of the Steering Group’s code of conduct does not appear to have been published.

## **We support the Working Group’s proposal for an overarching code of practice for property agents to be operated by the new regulator, setting out a series of**

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<sup>36</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>37</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>38</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>39</sup> [Q 6](#) (Conor O’Shea). See also written evidence from Shelter ([RPA0002](#))

<sup>40</sup> [Q 14](#) (Sebastian O’Kelly)

<sup>41</sup> [Q 26](#) (Luay Al-Khatib, Timothy Douglas, Andrew Bulmer)

<sup>42</sup> [Q 26](#) (Andrew Bulmer)

<sup>43</sup> Royal Institution of Chartered Surveyors, Press Release: [New group to raise standards and protect consumers in residential market](#) on 1 July 2020

ethical principles that agents should abide by, accompanied by more detailed codes for specific areas of property agent practice which could be amended by the regulator as required, in consultation with the sector. This should provide a more flexible and proactive means of spreading good practice and enforcing against failings.

*The new regulator must ensure that its codes of practice, and particularly the overarching code of practice, are focused on achieving good outcomes for consumers, including vulnerable consumers. While it is welcome that industry is already considering what an overarching code of practice might look like, it will be important for the regulator to take its own view on this, and with input from consumers.*

The Working Group also suggested a system of mandatory qualifications for property agents, with a requirement on every property agency to ensure that its staff are trained to the appropriate level. The Working Group recommended that the regulator should set the syllabus for mandatory qualifications, but that they should be delivered by separate bodies. Mandatory qualifications were proposed for licenced agents carrying out a specific set of reserved activities, including: conducting viewings; negotiating with clients; signing contracts; providing advice to clients; instructing contractors to undertake works; collecting or handling client money; and having responsibility for the health and safety compliance of a property.<sup>44</sup>

Requiring mandatory qualifications only for those performing reserved activities aimed to avoid “overly burdensome” requirements for other agency staff, such as general administrators. An exemption was proposed for apprentices training for the relevant qualifications, who would be “closely supervised by a qualified member of staff” when performing reserved activities.<sup>45</sup>

Conor O’Shea said that Generation Rent believes that “there should be one person in each letting agent branch who is qualified to work with low-income tenants”. He argued that this “is a space where letting agents can improve” and where a qualification could help, as their behaviours “can exacerbate” a situation where people on low incomes are finding it “increasingly difficult to find a property”.<sup>46</sup>

RICS’ Luay Al-Khatib called for a new regulator to ensure “there is consistency in the roles, functions and qualifications that attach to them”. However, he emphasised that “there is an opportunity to work with the professional bodies on the monitoring and enforcing of that, a point echoed by Propertymark’s Timothy Douglas.<sup>47</sup> Douglas noted that Scotland introduced regulation of letting agents in 2014<sup>48</sup> and last year both letting agents and landlords felt that

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<sup>44</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>45</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>46</sup> [Q 6](#) (Conor O’Shea)

<sup>47</sup> [Q 27](#) (Luay Al-Khatib), [Q 20](#) (Timothy Douglas)

<sup>48</sup> Housing (Scotland) Act 2014, [Part 4](#). This Part of the Act allows Scottish Ministers to set a regulatory framework for letting agents, including a mandatory register for letting agents, training requirements, a code of practice, a means of redress for breaches of the code, and powers to obtain information and perform inspections. The Act provides for regulation of letting agents but did not set up a new regulator to perform this function.



qualification had had a positive impact when surveyed.<sup>49</sup> Industry bodies stressed the need for a “staged approach” to mandating qualifications, arguing that this could be built up “gradually” in order to avoid “a supply-demand drop”.<sup>50</sup>

Andrew Bulmer said that previously qualifications had been largely technical, but that The Property Institute has introduced modules on safety, customer and ethics as part of its training, something which “is demanded by firms”.<sup>51</sup> The importance of customer-focused and ethical practice were echoed by other professional bodies.<sup>52</sup>

**We support proposals for mandatory qualifications for property agents carrying out reserved activities, ensuring that the burden of regulation is placed only on those performing activities that necessitate it.**

***The regulator should ensure that its mandatory qualifications for property agents include dealing ethically with consumers, including vulnerable consumers, alongside the necessary technical requirements for particular functions. The new regulator should consider taking a staged approach to mandating qualifications in order to allow a smooth transition.***

#### *Co-operation with existing bodies*

As outlined above, the new regulator would need to fit into a complex existing picture, which involves redress schemes, local enforcement and self-regulation through professional bodies.

The Working Group explained that “most property agent legislation is currently enforced by Trading Standards teams” working within local authorities, supported by National Trading Standards and particularly its Estate and Letting Agency Team. Its report said that “it would seem perverse not to take advantage of the resource and expertise already in place” when establishing a new regulator, arguing for a system of “flexible cooperation between the new regulator and Trading Standards teams” and for the new regulator to set guidance clarifying the roles of each to avoid duplication.<sup>53</sup>

The National Trading Standards Estate and Letting Agency Team’s Alison Farrar said that with a new regulator in place, local Trading Standards would “be looking at more local issues”, while National Trading Standards would look at “national priorities and the issues that may cross over boundaries”, as well as continuing to enforce the legislation that it is responsible for.<sup>54</sup> Rebecca Marsh suggested that a new regulator driving “better behaviour” from property agents would “help the enforcement burden on local authorities” by providing greater clarity on standards and expectations for agents. She argued that this would allow Trading Standards “to focus on ... driving out the worst offenders”.<sup>55</sup>

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<sup>49</sup> [Q 24](#) (Timothy Douglas)

<sup>50</sup> [Q 24](#) (Timothy Douglas, Luay Al-Khatib)

<sup>51</sup> [Q 25](#) (Andrew Bulmer)

<sup>52</sup> [Q 25](#) (Luay Al-Khatib, Timothy Douglas)

<sup>53</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>54</sup> [Q 33](#) (Alison Farrar)

<sup>55</sup> [Q 37](#) (Rebecca Marsh)

The Working Group outlined that as well as resolving individual complaints, redress schemes can use complaints data to work with companies and wider stakeholders, which could include the new regulator. The Working Group recommended that the new regulator should be able to consider complaints from all sources, including redress schemes, other agents, whistleblowers and accountants. It also suggested that “where solicitors, lawyers and other professionals have evidence of likely illegal agent behaviour, they be obligated to present that evidence to the new regulator”, as is the case with financial regulation.<sup>56</sup>

Rebecca Marsh, The Property Ombudsman, who leads one of the redress schemes, argued that the new regulator should pick up “high risk and high volume” issues and take on “upstream work” to set and revise its codes. This would allow the redress schemes to “act as the safety net” for lower-level issues and gather intelligence to feed into the regulator.<sup>57</sup>

The Working Group emphasised several functions that professional bodies could continue to play in a regulated sector, including providing voluntary codes of practice that go beyond minimum standards, providing qualifications and training and supporting their members in complying with regulation. Its report noted that the new regulator could delegate further functions to professional bodies, and recommended that the regulator “should be responsible for approving Designated Professional Bodies” for this purpose. This delegation would be subject to several conditions, including that it should be time-limited, that the ultimate sanction of revoking a licence should not sit with delegated bodies, and that the regulator would be able to overrule their decisions.<sup>58</sup>

Luay Al-Khatib of RICS emphasised that “a lot can be done through self-regulation”, which can play “a critical role in delivering good outcomes”. He said that the Designated Professional Body model is “certainly worth looking at”, working with professional bodies that are “already delivering to the standard that would be expected”. Al-Khatib argued that “an obvious and immediate step” that could be taken is to adopting existing industry codes. However, he nevertheless supported the creation of a new regulator, arguing that there “must be some statutory involvement” in setting minimum standards in order to ensure consistency and avoid regulatory arbitrage.<sup>59</sup>

**The new regulator will need to be carefully conceived in order to avoid duplicating the work of other bodies that already exist in the property sector. Trading Standards and redress schemes, for example, have an important role in focusing on individual cases and providing redress. However, we believe that there is a gap for a new regulator to fill in setting consistent, high standards for the sector, tackling systemic issues and providing strong enforcement against agents who consistently display poor practice. These roles cannot be played by Trading Standards or redress schemes.**

**The intelligence and data that Trading Standards and redress schemes build up through their casework would be a valuable source of information for a new**

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<sup>56</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>57</sup> [Q 31](#) (Rebecca Marsh)

<sup>58</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>59</sup> [Q 18, 21](#) (Luay Al-Khatib)

**regulator in deciding whether agents are complying with codes of practice. To aid this monitoring, any new regulator will need to work closely with Trading Standards and redress schemes to ensure they are aware of its requirements.**

***If a new regulator is established, it should work closely and share intelligence with existing redress schemes and local enforcement authorities to avoid poor practice from slipping through the gaps between them. To facilitate this, a Memorandum of Understanding should be agreed between the new regulator, National Trading Standards and the redress schemes.***

**If a new regulator is established, professional bodies will continue to have an important role to play in helping their members to be properly qualified and to comply with codes of practice. There may be a strong case for delegating some regulatory activities to professional bodies, particularly in relation to qualifications and training, in order to reduce duplication and additional costs. Due to the potential for conflicts of interest, this should only be done under certain conditions. The ultimate sanction of revoking a licence should remain with the regulator.**

***Whether professional bodies are delegated regulatory functions, and particularly enforcement functions, should be for the new regulator to decide. The new regulator should be open to delegating functions to professional bodies that it believes are already holding their members to high standards.***

The Government has set out its intention to introduce a single ombudsman for landlords in the private rented sector, arguing that this would provide “a streamlined service for tenants and landlords, avoiding the confusion and perverse incentives resulting from competitive schemes”.<sup>60</sup> However, this single ombudsman will be for landlords rather than property agents, and it is not clear how the ombudsman will co-operate with the existing redress schemes in the sector or how the Government intends to address the problems with having two competitive schemes for property agents.

Conor O’Shea of Generation Rent told us that the two redress schemes “compete with each other for the business ... of letting agents”, arguing that this means the schemes are “not as strong as they could be”. He also raised concerns that “only consumer rights complaints are covered”, that complaints processes are too long, and that there is “a lack of transparency” about agents who consistently face complaints. He said that Generation Rent “absolutely endorse[s] a single scheme” for redress, potentially including the new ombudsman for landlords.<sup>61</sup> Shelter argued that “uptake of existing repair and redress processes is low” due to the “complicated and confusing” nature of the current system, where “identifying the correct forum can be challenging”.<sup>62</sup>

The Working Group proposed that a new regulator for property agents should take over responsibility for approving property agent redress schemes, and should have the power to

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<sup>60</sup> Department for Levelling Up, Housing and Communities, [A fairer private rented sector](#) (August 2022). Powers for the Secretary of State to create the new ombudsman form part of the Renters (Reform) Bill, currently at Report Stage in the House of Commons.

<sup>61</sup> [QQ 2, 5](#) (Conor O’Shea)

<sup>62</sup> Written evidence from Shelter ([RPA0002](#))

appoint a single scheme if it believes this “is the best way of improving standards”. It suggested that a single ombudsman “might reduce costs” and would “simplify the consumer complaint journey and end fragmentation of complaint data”.<sup>63</sup>

Rebecca Marsh, The Property Ombudsman, said that the Ombudsman Association<sup>64</sup> has a principle “that you have one ombudsman in a sector” to avoid “confusion and complication” for consumers. In a situation where property agents choose the redress scheme, she asked how consumers can “have trust and confidence that they are choosing the best redress provider”. She called for either a single ombudsman, or one “driven by consumers’ preferences and not ... those being complained about”.<sup>65</sup>

Rebecca Marsh also said that The Property Ombudsman already operates in the private rented sector and could “quite professionally and effectively offer that extended service to landlords”, something it currently does on a voluntary basis, as part of the new ombudsman for the private rented sector.<sup>66</sup>

**The Government has previously stated that a single ombudsman for the private rented sector would avoid “the confusion and perverse incentives resulting from competitive schemes”. We agree, but this argument applies equally to the regulation of property agents, and it is therefore unclear why the Government continues to have two approved redress schemes for property agents. The two redress schemes are in competition to attract property agents, potentially undermining their focus on consumers.**

***In the short-term, the Government should set out plans to approve a single ombudsman or redress scheme for property agents. In the long-term, the Government should consider whether it would improve cohesion and consumer awareness for one body to provide redress in relation to both landlords and property agents.***

### *Funding*

In 2018, the Government argued that “property agents themselves should fund the regulator’s activities” as they profit from access to the market. It added that while a portion of these fees will be passed to their clients, they will “benefit from the assurance and protection that regulation brings”.<sup>67</sup> The Working Group said that introducing a licencing and regulatory body “will require significant resources to establish and operate”. It recommended that the Government should provide “seed corn” funding to support the creation of the new regulator, which should then be funded by regulated firms and individuals. Its report recommended a fee structure “that does not unfairly disadvantage new and small agents”, emphasising that it is “crucial that regulation does not lead to a ‘closed shop’ by pricing new or smaller agents out of the market”.<sup>68</sup>

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<sup>63</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>64</sup> Rebecca Marsh declared an interest in that she is a member of the Ombudsman Association’s Board.

<sup>65</sup> [QQ 35-36](#) (Rebecca Marsh)

<sup>66</sup> [QQ 35-36](#) (Rebecca Marsh)

<sup>67</sup> Ministry of Housing, Communities and Local Government, [Protecting consumers in the letting and managing agent market: government response](#) (April 2018)

<sup>68</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

Luay Al-Khatib told us that RICS spent over £13 million last year on its regulatory and standard-setting functions, explaining that this is “spread across a range of disciplines, and residential agency is only one of them”.<sup>69</sup> RICS also regulates professionals and firms “across more than 140 countries globally”.<sup>70</sup> Al-Khatib outlined that RICS regulates 9,000 firms and about 130,000 individuals, over 100,000 of whom are in the UK, while the new regulator would probably be regulating “north of 100,000 individuals across the sector”. Arguing that “any form of regulation needs to be resourced properly... otherwise it is really not worth the paper it is written on”, Al-Khatib stressed the importance of avoiding “additional duplicative cost in the system” as “it is likely that a substantial proportion of those costs would end up going on to consumers”.<sup>71</sup>

Propertymark’s Timothy Douglas said that letting agents already pay fees to HM Revenue and Customs for anti-money laundering supervision and many also pay fees to professional bodies, while in Scotland, where letting agents are regulated, “there is a fee per office”. He explained that Propertymark has continued to uphold its membership in Scotland alongside registration fees for regulation, and while cost “is an issue ... agents would be happy to pay it”.<sup>72</sup>

Bulmer stressed the need to “look at the savings” of regulation as well, “because a professionalised industry makes fewer mistakes”. He argued that housing can affect outcomes in several areas including “social welfare, health costs and children’s education”, meaning that “the costs to society of poorly managed housing stock ... extend far beyond any cost to a firm of a regulatory regime”.<sup>73</sup> Al-Khatib argued that regulation “will be seen as a net gain and will improve the sector”.<sup>74</sup>

Rebecca Marsh, The Property Ombudsman, argued that “it does not have to be a massive bureaucratic regulator” and could instead focus on “those issues that are high risk and high volume”, allowing the redress schemes to act as the safety net for lower-level issues.<sup>75</sup>

***If it legislates to establish a new regulator, the Government should provide some initial ‘seed corn’ funding necessary to set it up. Once established, however, the new regulator should fund its activities through modest fees or charges on those that it regulates, and the Government should grant it the ability to do this. The new regulator should ensure that its fee structure is proportionate and does not constitute a barrier to entry for small or new entrants to the sector.***

***Due to the potential costs this funding structure could place on property agents, which could be passed onto their customers, any new regulator must ensure it operates efficiently and avoids unnecessary duplication with other bodies.***

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<sup>69</sup> [Q 17](#) (Luay Al-Khatib)

<sup>70</sup> Royal Institution of Chartered Surveyors, [About RICS](#) [accessed 19 March 2024]

<sup>71</sup> [QQ 17, 21, 23](#) (Luay Al-Khatib)

<sup>72</sup> [Q 23](#) (Timothy Douglas)

<sup>73</sup> [Q 23](#) (Andrew Bulmer)

<sup>74</sup> [Q 24](#) (Luay Al-Khatib)

<sup>75</sup> [Q 31](#) (Rebecca Marsh)

## Leasehold

The owners of long leasehold properties have bought the right to live in the property for the period specified by their lease and are essentially in a landlord and tenant relationship with their freeholder, who will usually be paid a ground rent by the leaseholder.<sup>76</sup> In the case of owners of flats, management of the block, including its maintenance and insurance, normally remains in the hands of its freeholder, who may employ a managing agent to carry out the day-to-day management of the block. The lease agreement usually makes provision for the costs of the freeholder or their agent to recover the costs of these management functions in full from the leaseholders through service charges.<sup>77</sup>

The Government asked the Working Group to explore how service charges could be made more transparent. The Working Group noted that service charges are a “common subject” for enquiries to the Leasehold Advisory Service and that they can “often be difficult for leaseholders to understand”. Its report cited issues including a lack of a standard format for the presentation of service charge accounts and a situation where leaseholders can be left unsure of what they are paying for, how their contribution compares to others and whether the costs are justified.<sup>78</sup>

The Working Group recommended that the new regulator should be given a statutory duty to “ensure the transparency of leaseholder and freeholder charges”, and that it should work with the sector on the detail of regulatory codes to include provisions related to these charges. As part of these codes, the Working Group suggested that the new regulator should develop “standard industry cost codes”, helping to identify items of expenditure and more easily allow for comparison of the accounts of managing agents. The Working Group recommended that the new regulator should provide information on managing agent performance to allow “an informed choice” on selecting a managing agent.<sup>79</sup>

Parliament has since passed the Leasehold Reform (Ground Rent) Act 2022, which put an end to ground rents for new, qualifying long residential leasehold properties in England and Wales and entered into force in 2023. Further reform is planned through the Leasehold and Freehold Reform Bill, which is currently awaiting Second Reading in the House of Lords.<sup>80</sup> The Bill aims to make a series of changes to leasehold tenures, including, among other provisions: reducing ground rents to nominal amounts; requiring greater transparency on service charges; and replacing buildings insurance commissions with transparent administration fees.<sup>81</sup>

Sebastian O’Kelly, CEO of the Leasehold Knowledge Partnership, a charity which campaigns on behalf of leaseholders, said the key challenge is that “managing agents are not appointed by leaseholders”, they are “appointed by landlords and imposed on the leaseholders”. He

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<sup>76</sup> The Department for Levelling Up, Housing and Communities estimates that in 2021-22, there were an estimated 4.98 million leasehold dwellings in England, equating to 20% of English housing stock. 70% of leasehold dwellings are flats and 30% are houses. 94% of owner-occupied flats are owned on a leasehold basis.

<sup>77</sup> House of Commons Library, [Leasehold and commonhold reform](#), Research Briefing Number CBP08047 (September 2023)

<sup>78</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>79</sup> Ministry of Housing, Communities and Local Government, [Regulation of Property Agents: working group report](#) (July 2019)

<sup>80</sup> [Leasehold and Freehold Reform Bill](#) (HL Bill 50, 2023-24)

<sup>81</sup> [Explanatory Notes to the Leasehold and Freehold Reform Bill](#) [HL Bill 50, 2023-24]

argued that regulating managing agents “would be nice, but it is secondary” to changing “this imbalanced relationship”, in which leaseholders are “the product, not the customer”.<sup>82</sup>

Andrew Bulmer, CEO of The Property Institute, which represents managing agents, argued that the block management sector is changing at the moment, including by “pivoting towards the consumer”. He argued that “the days of being the landlord’s agent are long behind us” and emphasised that further change was coming through leasehold and building safety reform.<sup>83</sup>

O’Kelly said that the Leasehold and Freehold Reform Bill “addresses a handful” of these issues “but by no means all” of them, including in failing to safeguard “the £2 billion to £4 billion held in trust by managing agents” from service charges. Martin Boyd, Chair of LEASE, said that the Bill “does quite a lot to improve” the situation for leaseholders but emphasised the need to look at all aspects of regulation in the sector.<sup>84</sup> Andrew Bulmer, speaking for the industry, suggested that legislation is increasingly “democratising” power and control over buildings and handing it to leaseholders, which he argued “drives leaseholders into the hands of managing agents”, as leaseholders are not property managers. He argued that “regulation is required” to provide “minimum competency standards”.<sup>85</sup>

O’Kelly said that having standard industry cost codes for service charges that were “national and immediately comprehensible would be hugely useful”, as “at the moment, accounts are as opaque as they can possibly be, in many cases”.<sup>86</sup>

**It is notable that both leaseholders and industry bodies are supportive of greater regulation of managing agents. Given the amounts of money held by managing agents and their key role in ensuring the safety of the buildings they manage, it is crucial that managing agents are regulated and are appropriately qualified. Greater transparency and comparison of the costs that agents charge to leaseholders is also crucial.**

**However, we note the view of campaigners that regulation of managing agents will not address the key imbalance of power in the leasehold sector – the inability of leaseholders to choose their managing agents except in the limited circumstances allowed by the Right to Manage.**

**Campaigners were also clear that the Leasehold and Freehold Reform Bill somewhat addresses the power imbalance faced by leaseholders, including through greater transparency on service charges. However, in their view the provisions do not meet the recommendations of the Working Group, particularly in relation to regulation, and are not sufficient to address the issues that leaseholders face.**

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<sup>82</sup> [QQ 9, 13](#) (Sebastian O’Kelly). See also [QQ 30, 38](#) (Martin Boyd) and written evidence from an anonymous leaseholder ([RPA0001](#))

<sup>83</sup> [Q 16](#) (Andrew Bulmer)

<sup>84</sup> [Q 30](#) (Martin Boyd)

<sup>85</sup> [Q 16](#) (Andrew Bulmer)

<sup>86</sup> [Q 15](#) (Sebastian O’Kelly)

**Where it has not done so already, the Government should implement the Working Group's proposals for regulation of managing agents. This would be a necessary, but not sufficient, step towards bringing about the change required for leaseholders.**

#### *Statutory consumer representation*

In its February 2024 report on UK regulators, this Committee noted that “the difference in resources between individual consumers has the potential to distort the feedback” that regulators receive, but that in some areas “this potential gap is at least partially remedied by statutory provision for independent consumer advocacy”, as is present in the water, postal and energy sectors.<sup>87</sup> The Committee expressed concern that some sectors are not represented by statutory consumer advocates, “limiting the resources consumer bodies have to act in these areas”. Our report recommended that the Government “should establish or designate a statutory consumer advocate” in sectors with a substantial retail element, “or explain why it has chosen not to do so”.<sup>88</sup>

Conor O’Shea said that tenants “should be at the table” in these sorts of conversations, which “can sometimes happen in the abstract, outside tenants’ direct engagement”. He argued that it would be “very useful for tenants to have the knowledge that there is somebody they can speak to or a representative who knows about their lived experience”.<sup>89</sup> Professional bodies stressed the need for there to be “a means for the consumer’s voice to be heard”, and while they outlined some existing work on this in the industry, there was support for “consumer panels” or a “statutory residents’ panel” playing a part in the future regulatory framework.<sup>90</sup> Allison Farrar said that “if there is no voice” speaking for consumers and “bringing all this together, it will be a lot worse”.<sup>91</sup>

Rebecca Marsh, The Property Ombudsman, said that consumer representation is “crucial” but argued that the sector is “so diverse” that she would be “very worried” about whether a statutory consumer representative could accurately represent that diversity. She noted that there are “vulnerable landlords as well as vulnerable tenants” who are consumers of property agency, and stressed the need to be “careful that it is effective consumer representation”.<sup>92</sup>

***As part of legislation to establish regulation of property agents and a new regulator, the Government should legislate for statutory consumer representation to ensure that the views of consumers are loud and clear within the new framework. This is particularly important in the property sector, where there are many voices for industry but where consumers have had few avenues to express their views.***

The Committee requests a response to this letter, and particularly the bold-type conclusions and recommendations, by 26 April 2024. I am copying this letter to Lee Rowley MP, Minister of State for Housing, Planning and Building Safety in your Department, and Clive Betts MP, Chair of the Levelling Up, Housing and Communities Committee in the House of Commons.

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<sup>87</sup> In these areas, consumer bodies such as Citizens Advice or the Consumer Council for Water are funded by an industry levy to represent consumers in regulatory discussions.

<sup>88</sup> Industry and Regulators Committee, [Who watches the watchdogs? Improving the performance, independence and accountability of UK regulators](#) (1<sup>st</sup> Report, Session 2023-24, HL Paper 56)

<sup>89</sup> [Q 5](#) (Conor O’Shea)

<sup>90</sup> [Q 22](#) (Luay Al-Khatib, Timothy Douglas, Andrew Bulmer)

<sup>91</sup> [Q 34](#) (Allison Farrar)

<sup>92</sup> [Q 34](#) (Rebecca Marsh)



Yours sincerely,

Baroness Taylor of Bolton  
Chair of the Industry and Regulators Committee