

**Strengthening consumer redress in the housing market: a consultation**  
**Response from ARLA Propertymark and NAEA Propertymark**

**April 2018**

**Background**

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.
2. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.

**Questions**

**Q8. What do you consider to be the main problem with redress in the housing market, if any?**

3. We consider that there are three main problems with redress in the housing market. Firstly, it is not clear to consumers about who to raise a complaint with. Secondly, we believe that there are gaps in redress. Thirdly, the existing redress schemes are inconsistent in the way that they handle complaints.
4. It is not clear to consumers about who to raise a complaint with for three reasons. Firstly, the consumer is unaware that they must complain to the agent before the redress schemes can act. Secondly, the consumer expects the complaint to be resolved straight away. Thirdly, once the consumer has complained to the agent and wants to take the matter further they must work out which redress scheme the agent belongs to. Under the legal requirement for agents to belong to one of the three government-approved redress schemes there is an assumption that all agents have a complaints procedure in place and will deal with matters in the same way and to the same timescales. A quick search of agent websites will show the difference in complaints handling procedures and a difference in how the information is presented. This causes confusion and frustration to consumers when they see little action taken after raising a complaint. Of the three government-approved redress schemes, The

Property Ombudsman advises agents who are members of its scheme that they are “obliged” under their terms of membership to maintain and operate an in-house complaints procedure that must be in writing and “should” explain how consumers can raise a complaint internally and then to the Ombudsman if they remain dissatisfied. Furthermore, The Property Ombudsman advises that the procedure must be made available to the complainant “upon request”. To this end, The Property Ombudsman has produced an Internal Complaint Flow Chart to help its members process internal complaints handling.<sup>1</sup> To make it clearer to consumers, a unified and well publicised complaints process, with timescales for responding, must be adopted by all agents. The complaints process must then be publicised clearly in the agent’s office, on their website and used verbally when speaking to consumers to ensure they know who to raise a complaint with.

5. Gaps in redress are evident in the private rented sector when tenants rent directly from a landlord. The gap is significant considering forthcoming Government legislation to ban tenant fees<sup>2</sup> and the change in size and demography of the sector, which has now doubled in size since 2002.<sup>3</sup> Many self-managing landlords have other jobs and are not renting out their property full time. They are unlikely to have either a complaints procedure in place or the infrastructure comparable to a letting agent when dealing with grievances. Furthermore, if the consumer is dissatisfied with how the landlord has dealt with a complaint, unlike letting agents, there is no mandatory legal requirement for landlords to belong to a redress scheme. Although private landlords may join The Housing Ombudsman scheme on a voluntary basis very few do.<sup>4</sup> These two scenarios make it extremely difficult for consumers who are renting directly from a landlord to firstly raise a complaint and secondly have access to independent redress should they not be happy with how the landlord has dealt with their situation. This means that tenants are largely reliant on local authorities and the court system to enforce their rights. However, local authorities have limited resources and court procedures can be lengthy and expensive.
6. This gap in redress is particularly important and must be addressed for two reasons. Firstly, considering the Government’s plans to ban tenant fees, if fewer landlords use letting agents due the added costs because of the ban, the existing gap for consumers

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<sup>1</sup> [https://www.tpos.co.uk/images/documents/Membership\\_Compliance/ICP-Flow-Chart.pdf](https://www.tpos.co.uk/images/documents/Membership_Compliance/ICP-Flow-Chart.pdf)

<sup>2</sup> <https://www.gov.uk/government/news/government-action-to-end-letting-agent-fees>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/675942/2016-17\\_EHS\\_Headline\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/675942/2016-17_EHS_Headline_Report.pdf)

<sup>4</sup> <http://www.housing-ombudsman.org.uk/about-hos/membership/voluntary-membership/#.Wss372eotMs>

renting from self-managing landlords will deepen. Furthermore, in response to the Government's announcement that they will ban letting agent fees to tenants, ARLA Propertymark surveyed letting agents to ask what the impact of a ban on fees would be: 90% think that the ban will lead to a rise in rents, 60% think that the quality of properties will decline as a result of the letting fees ban and 40% think the ban will result in a fall in employment amongst agents in the medium to long term.<sup>5</sup> If letting agents leave the sector, more landlords are likely to be unaware of new (and existing) legal requirements, potentially causing widespread non-compliance; leaving more consumers dissatisfied when something goes wrong and without redress. Secondly, the private rented sector has become increasingly important as a permanent housing option for many people. In 2016-17, 20% (4.7 million) of households were renting privately.<sup>6</sup> This includes a sharp rise in the number of families living in the private rented sector. Within the sector it is estimated that 71% of properties are owned by individual landlords<sup>7</sup> with 60% of properties managed by letting agents.<sup>8</sup> Therefore, membership of a redress scheme for self-managing landlords would strengthen the rules for consumers in this part of the housing market and provide them with a cost-effective alternative to the courts as a method for resolving tenancy disputes.

7. Gaps in redress are evident in the New Home buying process because not all developers are registered members of the Consumer Code for Home Builders.<sup>9</sup> The Code is important in supporting consumers because it covers every stage of the home-buyer process from pre-contract, exchange of contract and during occupation of the property. Through the Code, the Home Builder must have procedures for receiving, handling, and resolving service calls and complaints from the consumer and other purchasers. Furthermore, the Code sets out that the Home Builder should inform the consumer about these procedures, and of dispute resolution arrangements operated as part of the Code, in writing. However, where developers are not registered members of the Code, consumers have no guarantee of receiving minimum standards of customer service or redress. To plug this gap in redress, all developers should be required to sign up to the Consumer Code for Home Builders to firstly, ensure that consumers are covered, and secondly to ensure the selling activities developers engage in are of a consistently high standard.

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<sup>5</sup> <http://www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/675942/2016-17\\_EHS\\_Headline\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/675942/2016-17_EHS_Headline_Report.pdf)

<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7249/2010380.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf)

<sup>8</sup> <https://www.york.ac.uk/media/chp/documents/2008/prsreviewweb.pdf>

<sup>9</sup> <http://www.consumercode.co.uk/>

8. Gaps in redress are evident when a leasehold block of flats are managed by the freeholder directly. All blocks of flats require an element of property management to deal with issues such as the maintenance of the common parts. However, most freeholders are not professional property managers and do not have the systems in place to be able to handle this work and deal with issues that arise. Therefore, it is usually out-sourced to a professional firm of managing agents who, unlike the freeholder, are required to belong to one of the three government-approved redress schemes. However, where the management of the property is not outsourced, consumers are left not knowing who to raise a complaint with and without access to independent redress should they be dissatisfied with how the freeholder has dealt with their complaint. Measures must be introduced to incorporate sector specific complaints procedures for freeholders as well as access to independent redress for consumers living in this area of the housing market.
  
9. Redress schemes are inconsistent in the way that they handle complaints because agents who are members of the schemes are not working to the same requirements and the schemes adjudicate to different professional standards. This is evident in two ways. Firstly, out of the three government-approved redress schemes (The Property Ombudsman; The Ombudsman Service; Property Redress Scheme) only The Property Ombudsman has a Code of Practice that members of the scheme must comply with. Secondly, because The Property Ombudsman was the first redress scheme to gain status as an Office of Fair Trading Approved Estate Agents Redress scheme under the provisions of the Consumers Estate Agents and Redress Act 2007 before the introduction of approved Code of Practices, some agents working in residential sales and residential lettings have signed up as 'Registered Members' of The Property Ombudsman. These members do not subscribe to The Property Ombudsman Code of Practice and display a different logo to members of The Property Ombudsman. This creates further confusion for consumers and inconsistencies in standards.
  
10. As stated earlier in response to this question, complaints procedures vary from agent to agent. However, those agents (residential sales, residential lettings, commercial and business agents, auctions/chattels, international property, buying agents and buying property companies, block management) who are members of The Property Ombudsman have agreed to abide by The Property Ombudsman's Code of Practice. As part of their membership obligations, agents must maintain and operate an internal complaints procedure. This procedure must be in writing and contain the timescales which are outlined in The Property Ombudsman's Code of Practice as well as the

correct details for The Property Ombudsman, such as address, website and telephone number. Furthermore, The Property Ombudsman has worked closely with the Chartered Trading Standards Institute to obtain approval of the Code of Practice so that members can also benefit from being allowed to display the Chartered Trading Standards Institute logo to consumers. The Code and all legal and regulatory obligations placed on agents are then used to adjudicate against members who are registered with The Property Ombudsman.

11. In contrast, The Property Redress Scheme will consider any relevant statutory codes of practice and all legal and regulatory obligations relating to the work a registered member undertakes as well as any Code of Practice that a member has voluntarily entered because of its membership of another organisation. Up to 6 August 2018, Ombudsman Services: Property will provide a facility for the independent and impartial resolution of disputes between its members and their clients.<sup>10</sup> Participating companies include members of RICS, estate agents and other property professionals who have opted to join. Member firms participating with the Ombudsman Services: Property who are also members of RICS are subject to the relevant RICS rules and regulations. However, when deciding against a member, Ombudsman Services: Property considers all relevant Codes of Practice.
12. 'Registered Membership' of The Property Ombudsman applies for all agents dealing in UK residential sales and residential lettings in England, who wish to register for the minimum legal requirement. This means they do not agree to follow The Property Ombudsman's Code of Practice. However, they do subscribe to The Property Ombudsman's general membership obligations including the legal minimum requirements for sales and lettings. These agents use The Property Ombudsman's 'registered agents' logo rather than The Property Ombudsman's membership logo which has been approved by the Chartered Trading Standards Institute. Whilst these agents fall under The Property Ombudsman umbrella they are not working to a Code of Practice. As a result, there is no benchmark for these agents to work to and there is no guarantee for the consumer that these agents are all providing a consistent service.
13. Consequently, the rules applied which agents must comply with to be a member of an ombudsman vary from scheme to scheme. Furthermore, the three government-approved schemes are adjudicating to different professional standards. This creates

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<sup>10</sup> <https://www.ombudsman-services.org/news/news-item/2018/02/06/new-dialogue-launched-into-ombudsman-for-housing>

inconsistencies in the way that the schemes handle complaints. We believe that all agents should adhere to an approved code of practice that can be used by the redress schemes to adjudicate consistently across the sector. An approved code will also ensure that agents can demonstrate a high level of customer service and protection, such as a robust and legitimate customer complaints procedure, which can be used to hold agents to account.

**Q9. Which solutions below do you think would best improve redress in the housing sector?**

14. We believe that there are four solutions that would best improve redress in the housing sector. Firstly, better awareness from consumers of how to raise complaints. Secondly, schemes all operating to the same criteria/standards. Thirdly, a code of practice for housing providers (e.g. landlords, housing associations, developers) on complaints handling. Fourthly, a streamlined redress provision in housing.
15. To generate better awareness from consumers about how to raise complaints the Government must firstly ensure that all agents have a complaints procedure in place and secondly ensure it is well publicised. This can be done in two ways; via agents themselves and the online property portals.
16. The agents' complaints procedure must be prominent on the agent's website, in branch, on marketing literature and explained when the agent speaks directly to the consumer. Once established the complaints procedure must make it clear to consumers that making a complaint is a two-stage process. The first stage outlining what the agent will do and how they will communicate, including established timescales for responding. The second stage must incorporate information about the redress scheme the agent is a member of and how and when the redress scheme can get involved. Only by ensuring that all agents have a written and well publicised complaints procedure in place, with consistent timescales for responding, will consumers have better awareness about the two-stage process of how to raise a complaint.
17. More renters and house-hunters than ever are now starting their search for property by looking online at one of the property portals. Consequently, the portals have a greater role to play in providing information to consumers and should also make clear which redress scheme the agent belongs to. In 2014, The Property Ombudsman worked with Zoopla to create a tool which allows all member agents to display The

Property Ombudsman logo on all their property advertisements.<sup>11</sup> Tools such as these should be used on the other property portals to help inform and educate the consumer about the standards of customer care they should expect and where to go if something goes wrong.

18. Ensuring that the schemes are all operating to the same criteria/standards would guarantee that all the schemes' members are abiding by the same professional standards and the schemes are adjudicating against members in the same way. As outlined in our response to Question Eight, The Property Ombudsman's Code of Practice sets out to members such things as specific timescales that the agent must adhere to for complaints handling. The Property Ombudsman will then use the Code of Practice to arrive at its decision when judging a complaint against an agent who is a member of the scheme. Importantly, this ensures that the complaints handling process of members and adjudication from the scheme are aligned. As a result, from the outset of becoming a member of the scheme, agents are clear on the standards they must abide by. In contrast, the Property Redress Scheme does not require agents to sign up to a Code of Practice. Instead, it will consider any relevant statutory Code of Practice relating to the work a member undertakes and any Code of Practice that a member has voluntarily entered because of its membership of another organisation. This means, it is less clear to members of the Property Redress Scheme about the standards they must abide by. Furthermore, these standards are not aligned with the Property Redress Scheme's decision-making process.
19. A code of practice for housing providers (e.g. landlords, housing associations, developers) on complaints handling would ensure that consumers are aware of what to expect. The code should say who the consumer is to raise a complaint with, the means of communication and how the process will work. In the private rented sector, we know that if a property is well managed and maintained during a tenancy, it creates good will between the landlord and the tenant. However, it is often when maintenance issues aren't resolved that tenants will look to take further action and seek redress. Underpinning all these issues is the need for good communication. We believe that a code of practice for housing providers, which sets out minimum standards for complaints handling in a transparent, accessible and effective way, would help to improve redress in the housing sector.
20. A streamlined redress provision in housing would improve redress in the housing sector by reducing existing confusion for consumers about who to go to when

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<sup>11</sup> <https://www.tpos.co.uk/members/news-articles/item/december-20>

dissatisfied with how their complaint has been handled. To do this, the Government should create a single-entry point (one ombudsman portal for housing related complaints) for consumers to engage with the redress process. This entry point should have the capacity to redirect the consumer to their agent to exhaust the agent's formal complaint proceedings or direct the issue to the relevant ombudsman. Consumers want simple, quick and effective redress. A single ombudsman portal would allow for a clear and simple system for consumers to raise complaints about their home.

#### **Q10. Could more be done to improve in-house complaint handling for consumers?**

21. Yes, more could be done to improve in-house complaint handling for consumers. It is a widespread problem in the property sector. The Property Ombudsman's annual report 2016 shows that 'In-house complaints handling' was the third most common cause of complaint for lettings and fourth most prevalent complaint for the sales sector.<sup>12</sup> The other most common complaints from sales and lettings include 'management', 'communication and record keeping', 'referencing' and 'terms of business'. The issue can be improved by the practices of agents, greater promotion and take up of relevant courses and qualifications, and improved industry guidance.
22. To improve in-house complaint handling for consumers we believe there are four areas that agents should focus on. Firstly, it is imperative that all agents have a clear, flexible and open policy on complaints. Secondly, staff and management of agencies need to be trained adequately in complaints handling. Thirdly, the agent needs to ensure that they can process complaints from all sources, such as complaints received in person in branch, by telephone, by mail or by email, website and social media. Agents must be able to handle all these efficiently. Fourthly, agents need to set up processes to log and analyse complaints to learn from problems and improve internal processes.
23. Propertymark runs a series of online courses on Customer Focus, Soft Skills for Customer Service and Records Management.<sup>13</sup> Furthermore, the Level 2 Award in Introduction to Residential Property Management Practice - England & Wales<sup>14</sup> and

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<sup>12</sup> <https://www.tpos.co.uk/members/news-articles/item/the-property-ombudsman-launches-its-annual-report-at-house-of-lords-event-3>

<sup>13</sup> <http://www.naea.co.uk/training-qualifications/business-skills/>

<sup>14</sup>

[http://www.propertymarkqualifications.co.uk/media/315083/level\\_2\\_award\\_in\\_introduction\\_to\\_residential\\_letting\\_and\\_property\\_management\\_qualification\\_specification.pdf](http://www.propertymarkqualifications.co.uk/media/315083/level_2_award_in_introduction_to_residential_letting_and_property_management_qualification_specification.pdf)

the Level 2 Award in Introduction to Sale of Residential Property - England, Wales & Northern Ireland<sup>15</sup> include a unit dedicated to Customer Service within the Property Sector with a focus on candidates understanding the complaints and disputes procedures. Qualifications and training courses can help to drive up standards and should be promoted widely.

24. Furthermore, although not linked directly to in-house complaints, the Consumer Protection from Unfair Trading Regulations 2008 protects consumers from unfair or misleading trading practices and bans misleading omissions and aggressive sales tactics.<sup>16</sup> The Regulations are relevant for property sales businesses when carrying out their activities in the UK. NAEA Propertymark has for a long time supported moves towards the Regulation's Guidance for sales agents to be presented in a way that consumers will find easier to understand and include specific examples which will help agents to understand what they should and should not say when dealing with consumers. Working examples could include the need for agents to tell an individual or couple looking to buy a house for retirement that there is a school nearby with increased noise and traffic levels at certain times; a self-employed consumer looking to purchase a property should be made aware of any parking restrictions surrounding commercial vehicles. By including detailed instances relevant to the buying and selling process we believe that the Guidance would be more descriptive and allow agents to clearly understand what they can and cannot do. Importantly, it could help to prevent complaints arising in the first place and reduce the need for consumers to seek redress when buying and selling property.

**Q11. Are there common practices that housing consumers and businesses should be able to expect from a redress scheme, or do different sectors in housing require different practices?**

25. Yes, we believe that there are common practices that housing consumers and businesses should be able to expect from a redress scheme.

**Q12. If you believe there should be common practices that consumers should be able to expect from a housing redress scheme, what should they include?**

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[http://www.propertymarkqualifications.co.uk/media/315077/level\\_2\\_award\\_in\\_introduction\\_to\\_sale\\_of\\_residential\\_property\\_qualification\\_specification.pdf](http://www.propertymarkqualifications.co.uk/media/315077/level_2_award_in_introduction_to_sale_of_residential_property_qualification_specification.pdf)

<sup>16</sup> <http://www.legislation.gov.uk/uksi/2008/1277/contents/made>

26. The common practices should include all the practices listed in the consultation document. These are: rules relating to the types of issues consumers can complain about; rules relating to the timeframe in which consumers can complain to a provider; policies to support awareness raising; timeliness of complaint handling; cost to consumers; compensation levels; codes of practice specific to the sector; cost to members/ payment structures; transparency of decisions.
27. Common practices are needed because a redress scheme must have visible and demonstrable independence from those who they investigate. They must consider what is fair conduct and good practice. The scheme must be sufficiently staffed and funded. Furthermore, the scheme's procedures to complain must be straightforward and free of charge. Importantly, the decision or recommendation from the redress scheme must be binding and enforceable. Overall, the scheme must be open, transparent and accountable including publicising offences and offenders.
28. These common practices are important in the housing sector because consumers move between tenures and will therefore cross redress boundaries. In leasehold blocks, for example, where a letting agent is letting property in a block of flats and a managing agent is in control of managing, maintaining and repairing the communal areas of the property there could be confusion over who to complain to. Furthermore, the letting agent and the managing agent are likely to be members of different redress schemes. However, if common practices exist irrespective of the issue this will ensure that all consumers receive a consistent service and outcome.

**Q13. Do you think that a redress scheme should publish decisions and the number of complaints relating to different providers? Please explain why.**

29. Yes, we do think that a redress scheme should publish decisions and the number of complaints relating to different providers. We think this for three reasons. Firstly, it will encourage agents to benchmark their standards of complaints-handling against other agents. Secondly, it will allow agents to learn from agents who are handling complaints better. Thirdly, we think it will help to reduce the number of unresolved complaints referred to a redress scheme. Other sectors, such as the Financial Ombudsman<sup>17</sup>, publish this data and by replicating this in the property sector we believe it would be a way for people to see how agents are performing, but importantly improve complaints handling across the industry.

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<sup>17</sup> <http://www.financial-ombudsman.org.uk/publications/index.htm>

**Q14. What is a reasonable time frame for a redress scheme to deal with a complaint?**

30. It is not possible to determine a reasonable time frame for a redress scheme to deal with a complaint. This is because the time frame it takes depends on two factors. Firstly, how complex the case is and secondly, how long it takes the ombudsman to gather information and resolve the matter. However, we believe that a streamlined method to redress will ensure a quick and more consistent approach for consumers.
31. Dealing with a complaint is complex because, for example, in the estate agency sector property sales usually concern a single transaction that has a start and end involving only a few people. However, in the private rented sector letting complaints can be more complex. They can relate to multiple tenancies with numerous tenants and cover a period of years rather than months. Furthermore, in certain cases there will be legitimate reasons for taking longer for issues to be resolved at a property. For instance, if significant structural repairs, such as replacing a wall or roof are needed. Conversely, it is reasonable for consumers to expect it to take less time to fix a broken heating system in cold weather. Therefore, several factors influence the time frame for redress.
32. On average The Property Ombudsman takes between sixteen and eighteen weeks to resolve a complaint. However, we believe that with increased provision to ensure all agents have a complaints procedure in place, a single-entry point for consumers to engage with the redress process and published decisions this will drive up standards and reduce the number of complaints dealt with by redress schemes. We believe it will also free up resources within the scheme to deal with the cases it receives and speed up the time it takes for the ombudsman to deal with a complaint.

**Q15. How should a redress scheme support consumers to access its scheme?**

33. A redress scheme should support consumers to access its scheme by being visible and providing clear information. To do this, redress schemes must provide clear information and advice to consumers via a variety of channels. These include, social media, website, email, telephone and post. Visibility can be carried out in two ways. Firstly, by a redress scheme itself and secondly by its members. There must be a legal requirement for all registered members across the property sector to display which redress scheme they belong to. Currently, there is a legal requirement for letting agents but not sales agents to display which redress scheme they belong. Furthermore, the legal requirement to display the redress scheme to which an agent

belongs must also state how and where a housing provider should clearly display their membership as not all will have offices which consumers frequent.

**Q16: What kind of sanctions should a redress scheme have access to?**

34. We believe that a redress scheme should have access to a full range of sanctions. These should include: financial awards greater than £25,000; expulsion from the scheme; powers to make decisions binding; referrals to enforcement agencies/regulators; a range of options depending on the type and size of provider. A full range of sanctions is required to provide both adequate redress for consumers in all circumstances and a deterrent to bad practice.

**Q17. Have you encountered any gaps between different issues, ombudsmen and redress schemes in terms of their areas of responsibility?**

35. Yes, we have encountered gaps between different issues, ombudsmen and redress schemes in terms of their areas of responsibility. Please refer to our answers to questions eight and twelve.

**Q18. Should purchasers of new build homes have access to an ombudsman scheme?**

36. Yes, we do think that purchasers of new build homes should have access to an ombudsman scheme.

37. As outlined in our response to question eight, all developers should adhere to the Consumer Code for Home Builders. The Code's pre-sale and handover requirements apply to home buyers who are the first purchasers of that home. The Code's after-sales service applies to anyone who was the initial purchaser of the home but also to any subsequent buyers of that home within the first two years of the initial purchase. By ensuring that developers sign up to the Consumer Code for Home Builders, all purchasers of new build homes will be fully informed about their purchase and their consumer rights before and after they move in. Consumers will also be provided with a quick and low cost dispute resolution scheme to deal with complaints about breaches of the Code.

**Q19. Is there an existing ombudsman scheme that is best placed to deliver this?**

38. Yes, The Property Ombudsman is best placed scheme to deliver redress for the property sector. The scheme has the appropriate expertise and its existing size and

market share means it can upscale its operation and expertise much more easily than other schemes.

39. The Property Ombudsman's expertise has developed over the years and has been providing consumers and property agents with an alternative dispute resolution service since 1990.<sup>18</sup> The scheme provides a facility for the independent and impartial resolution of disputes between any small commercial businessman, charity or consumer (who may be an actual or potential buyer, seller, landlord, leaseholder, lessee or tenant of property or who has otherwise become involved) and firms that are directly members of the scheme or who are subject to The Property Ombudsman's jurisdiction, in relation to the carrying out of relevant estate and/or letting agency and/or property management work by those firms in the UK, Channel Islands and the Isle of Man.

40. The schemes existing size and market share is represented by the fact that it is the largest government-approved property redress scheme in the UK. Out of a total of 38,017 agents more than 95% of estate agents (15,316) and 85% of letting agents (14,613) are signed up with the scheme. In 2016, The Property Ombudsman received 14,218 enquiries from consumers and resolved 3,553 complaints.<sup>19</sup>

#### **Q20. Should this body be statutory?**

41. If the Government decide to create a single housing ombudsman, then we do think this body should be statutory. Consumers need to have confidence that any organisation bearing the ombudsman brand will investigate impartially and ensure registered members abide by their decision. However, if the Government decide to introduce a portal, then it should be included within the existing government-approved redress schemes as they are already established in law and set up to enact legislation.

#### **Q21. Aside from the issues discussed in section three of this document, are there other things we should be considering to ensure that complaints are dealt with swiftly and effectively by homebuilders?**

42. Yes, the Government need to consider the consistency across warranties and guarantees provided by home builders. The construction of new build homes to help

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<sup>18</sup> <https://www.tpos.co.uk/about-us>

<sup>19</sup> [https://www.tpos.co.uk/images/TPO Annual Report 2016 FINAL WEB LINKS.pdf](https://www.tpos.co.uk/images/TPO%20Annual%20Report%202016%20FINAL%20WEB%20LINKS.pdf)

meet the Government's ambitious targets must be supported by a simplified and straightforward redress process, which can be accessed by the prospective purchaser and new home owner when issues arise. To this end, the Government should ensure that all home builders abide by the Consumer Code for Home Builders which came into effect in April 2010. The Code should apply to all home builders registered with the UK's main new Home Warranty Bodies; NHBC, Premier Guarantee and LABC Warranty. One of the big attractions of buying a new-build home is the peace of mind that comes with the warranty associated with the purchase. Before exchanging contracts, consumers should receive relevant information about warranties and insurance in their reservation agreement. They should also be given clear guidance on what is covered and how to make a claim if things go wrong. The Consumer Code for Home Builders consists of 19 requirements and principles that home builders must meet in their marketing and selling of homes and their after-sales customer service. The Code should be adopted by all home builders.

**Q22. Should the requirement for private landlords to belong to a redress scheme apply to all private landlords?**

43. No, the requirement for landlords to belong to a redress scheme should not apply to all private landlords. The requirement should be limited only to those landlords who do not use an agent to let and manage their property. This is because the letting agent is already required to register with a redress scheme and therefore the consumer has access to independent redress.

**Q23. Who is best placed to provide a redress scheme for private landlords?**

44. We believe that the existing redress schemes in the private rented sector are best placed to provide redress for private landlords.

**Q24. How should redress scheme membership for private landlords be costed?**

45. The costs of redress scheme membership for private landlords should be set by the scheme or approved schemes. This is a commercial decision that the scheme or schemes should be able to decide.

**Q25. How should the requirement to be a member of a redress scheme be enforced and by whom? And are there any other markets we can learn from in order to ensure compliance by a large number of small scale providers?**

46. We believe that the requirement for agents to be a member of a redress scheme should be enforced by Trading Standards and the requirement for self-managing landlords to be a member of a redress scheme should be enforced by Environmental Health Officers. Local authorities are responsible for the health and safety of properties in their area through their Environmental Health department. Most disrepair issues that a landlord is legally responsible for fixing will fall under the responsibility of Environmental Health, and in these cases, tenants would need to apply to the local Environmental Health Department for an inspection of their home. Conversely, the issues that Trading Standards Officers have competency to deal with mean they are unlikely to encounter self-managing private landlords (on a regular basis) whereas Environmental Health Officers will deal with landlords directly.

47. Automatic compensation is an area that Ofcom have introduced to protect telecoms customers.<sup>20</sup> Under the scheme broadband and landline customers can get money back from their providers when things go wrong without having to make a claim. Customers are compensated automatically by providers for slow repairs, missed appointments and delayed installations, which in-turn means credit on a customer's account without having to ask. A similar scheme could be set up for landlords and housing providers to ensure that they respond to consumer complaints and deal with issues within a certain time frame.

**Q26. What should the penalty for initial non-compliance be? If a financial penalty, what would be an appropriate level of fine?**

48. We want to see a range of sanctions for non-compliance. This should include a Banning Order; loss of right to evict tenants under Section 21; Civil Penalty Notices as well as Improvement Notices and/or Enforcement Notices. The penalties should be based on the size of the business and whether the reason was error, ignorance or offenders were wilfully ignoring the rules. This should also include a financial penalty of a fine up to £30,000, which would bring the sanctions in line with recent changes to local authority powers to enforce civil penalties of up to £30,000 as an alternative to prosecution for housing offences.

**Q27: How can Government best ensure that landlords are aware of their requirement to belong to a redress scheme?**

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<sup>20</sup> <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/automatic-compensation2>

49. The Government should embark on a major communication campaign involving all the actors and partners in the sector to ensure that landlords are aware of their requirements to belong to a redress scheme. The Government should do this by working with local authorities, Government agencies, financial institutions, letting agents and professional bodies.
50. Local authorities hold several databases with information about landlords, which should be used to directly communicate with them. These include Selective and Additional licensing schemes and Private Rented Sector Charters introduced by local authorities. Many local authorities also hold landlord forums which can be used to distribute information about requirements to belong to a redress scheme. Local authorities also have a legal duty to collect Council Tax and can provide information to landlords via Council Tax notices.
51. Government agencies such as Her Majesty's Revenue and Customs (HMRC) can send landlords information when they complete their tax returns. Information can also be communicated to landlords where tenants are claiming Universal Credit. This can be done via Job Centre Work Coaches who work with landlords when tenants are receiving benefits.
52. Mortgage lenders can also signpost information when new landlords enter the market and take out a buy-to-let mortgage or existing landlords buy new property or re-mortgage any properties in their existing portfolio. In addition, it is legal requirement for landlords to put a tenant's deposit in a government-backed tenancy deposit scheme. These are: Tenancy Deposit Scheme (TDS), Deposit Protection Service (DPS) and MyDeposits. When the deposit has been protected the landlord must provide the tenant with prescribed information about where their deposit is being protected and how it will be managed. Therefore, the tenancy deposit schemes can communicate with landlords and inform them of the requirement to join a redress scheme when they protect a deposit.
53. More than 50% of landlords use letting agents and as a result they are well placed to communicate to this section of the housing market. Letting agents could also be required to check a landlord's redress requirements before they enter any business relationship on a let-only or rent collection service. To this end, the Government should work with the professional bodies within the sector such as ARLA Propertymark to disseminate information to landlords.<sup>21</sup>

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<sup>21</sup> <http://www.arla.co.uk/#find-an-expert>

**Q28: Are there any other voluntary or medium-term measures that could be implemented to improve redress for tenants in the private rented sector ahead of any legislative changes?**

54. We are not aware of any other voluntary or medium-term measures that could be implemented to improve redress for tenants in the private rented sector ahead of any legislative changes.

**Q29. Do you think that freeholders of leasehold properties should all be required to sign up to a redress scheme?**

55. Yes, we do think that freeholders of leasehold properties should all be required to sign up to a redress scheme. An absent freeholder can cause several problems for leaseholders in a building. The most common ones are the management of the building, the sale of a leasehold property and the need for a new lease or lease extension. Currently, there is no requirement for freeholders of leasehold property where they are not using a managing agent to register with a redress scheme. As a result, only leaseholders and freeholders dealing with property managers will be able to complain to an independent body about the service they have received. By guaranteeing that freeholders of leasehold properties are all required to sign up to a redress scheme this will ensure that leaseholders have access to redress where there is no managing agent and the freeholder is self-managing the property.

**Q30: Should we streamline redress provision in housing, and if so, what would be the most effective model? Please explain below what you see as the benefits and challenges of the options.**

56. Yes, the Government should streamline redress provision in housing. The most effective model to do this is a combination of two things. Firstly, there should be one ombudsman portal for housing related complaints. Secondly, one ombudsman for private housing and another for social housing. This would be the most effective model for six reasons. Firstly, it will ensure a commonality of approach. Secondly, develop sector specialism through law and practice. Thirdly, it will increase transparency. Fourthly, it will ensure a commonality of approach. Fifthly, it will ensure consistency and speed of redress. Sixthly, it will ensure that sector is providing a professional service.

57. This approach will bring clarity to consumers because the one ombudsman portal will ensure they know where to go to raise housing related complaints. Once a complaint has been raised the portal should have the capacity to filter or advance complaints for consumers. It's imperative that the new streamline redress provision for housing can intervene early to support parties to resolve cases as quickly as possible. For instance, the portal could provide the consumer with a set of short questions to review their situation and work out what the best course of action is. The portal will then need to analyse this information and either refer the consumer back to the housing provider (for example if the internal complaints process has not been first exhausted) or advance the complaint to the relevant housing ombudsman.
58. Redress works in different ways for private and social housing. It is not feasible to only have a single ombudsman for the property sector. By having one ombudsman for private housing and another for social housing this will ensure consistency across the housing sectors and improve speed of redress. Based on knowledge, size of membership, experience and capacity, we believe that the ombudsman for private housing should be The Property Ombudsman and the ombudsman for social housing should be the Housing Ombudsman. The Property Ombudsman will cover the private rented sector, block management, land and new homes, sales and letting agents. The Housing Ombudsman will cover social landlords, housing associations and providers of social homes. As stated previously in our response there are gaps in redress and a lack of transparency in how the schemes operate leads to uneven standards of investigation and redress. To mitigate these issues, it is imperative that consumer complaints are dealt with by experienced and trained adjudicators who understand the significant complexities that exist within the different sectors of the property market. Expert and well-trained staff can provide guidance to help consumers navigate housing providers complaints procedures as well as helping consumers to articulate their complaint clearly. This is particularly important for vulnerable complainants who may not have the knowledge or skills on their own to go through a landlord, agent or developer's complaints procedure and then pursue a complaint to a redress scheme. An ombudsman for private housing and one for social housing would provide clarity and transparency for consumers.
59. The two ombudsmen should hold responsibility for and outline the overarching principles for how the private and social housing sectors should handle complaints. By doing this it will unify the existing procedures and ensure that members of redress schemes are working to the same professional standards. It will also mean that where there are overlaps between the private sector and social housing the two ombudsmen

can work together, creating a commonality in approach. It will also allow for one of the schemes to take the lead if a complaint covers both sectors.

60. The overarching principles should then be developed to ensure that the ombudsmen hold relevant industry codes of practice that are more detailed. The industry-specific codes of practice would cater for the diversity of work carried out under the various industry disciplines (one for lettings, one for sales, one for block management, one for landlords, one for social housing providers, one for land and new homes). This would cater for the specialisms in law and practice across the property sector but also drive up professional standards.
61. The Government has set out plans to regulate property agents<sup>2223</sup> and a streamlined redress provision in housing provides an opportunity to build a relationship between the two housing ombudsmen and a regulator of the industry. Looking ahead, working practice could be developed to ensure that the ombudsmen are obliged to inform the regulator of any new member of the scheme and work with the regulator to ensure that complaints, such as those seeking regulatory action contact the regulator and those requiring individual redress contact the portal, are signposted effectively. There is also the possibility of ensuring that the ombudsmen can refer providers to the regulator. For example, under the current rules for where a redress scheme has upheld a complaint against an agent, but the agent has failed to pay compensation the redress scheme cannot enforce the order. The redress scheme can only expel the agent from the scheme. By linking up with the regulator more regulatory action can be taken against agents who do not adhere to the professional standards set out by the redress schemes.

**Q31: If you ticked 'Yes' to one ombudsman or one portal above then which areas of redress should be incorporated?**

62. We believe that there should be one portal for housing related complaints and one ombudsman for private housing and another for social housing. The ombudsman for private housing should cover private rented sector tenants, leaseholders with a private sector freeholder, purchasers who have brought a new home, purchasers and sellers of existing homes, park home owners. The ombudsman for social housing should include social housing tenants, leaseholders with a social housing provider as

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<sup>22</sup> <https://www.gov.uk/government/news/new-crackdown-on-rogue-agents-to-protect-renters-and-leasehold-homeowners>

<sup>23</sup> <https://www.gov.uk/government/news/government-to-professionalise-the-estate-agent-market>

freeholder, persons applying to a local authority for social housing, persons approaching their local authority for homelessness advice, persons applying for a tenancy with a housing association.