

# **Property Management Services**

Final Statement of Scope

March 2014

OFT1524

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# 1 INTRODUCTION

- 1.1 The Office of Fair Trading (OFT) has commenced a market study into the market for the provision of residential property management services (RPMS) in England and Wales, in order to examine whether the market is working well for consumers, and if not, whether there is potential for improving how it functions.
- 1.2 On 3 December 2013 the OFT announced its proposal to conduct a market study, and published a Scoping Paper<sup>1</sup> setting out the proposed scope of the study based on its preliminary research into the market and discussions with stakeholders.
- 1.3 The OFT received more than 250 written responses to its Scoping Paper from stakeholders including: property managers, leaseholders, industry groups and other government departments. The consultation closed on 17 January 2014.
- 1.4 These submissions and discussions have confirmed that there are concerns about whether this is a market that is working well for consumers, businesses and the economy.
- 1.5 In April 2014, the Competition and Markets Authority (the CMA) will become the UK's lead competition and consumer body. The CMA will bring together the existing competition and certain consumer protection functions of the Office of Fair Trading and the responsibilities of the Competition Commission, as amended by the Enterprise and Regulatory Reform Act 2013. The CMA, which is a non-Ministerial government department, was established on 1 October 2013 and will be taking on responsibility for ongoing cases and market studies from 1 April 2014,<sup>2</sup> including this market study.

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<sup>1</sup> Property Management Services - A Scoping Paper, OFT1513 December 2013.

<sup>2</sup> See [www.gov.uk/cma](http://www.gov.uk/cma) for more information.

## Summary of final scope

- 1.6 The OFT has taken into consideration the submissions that it received and the meetings it held with stakeholders in determining the final scope of this market study.
- 1.7 The 3 December Scoping Paper proposed that the market study would examine the following:
- leaseholders' perceptions of value for money and the quality of services they receive
  - whether leaseholders have sufficient understanding of their rights and obligations with regard to the management of property
  - whether leaseholders have sufficient influence on decisions taken by freeholders in relation to the appointment of property managers, and subsequently in the supply of RPMS
  - whether property managers and freeholders have the same interests as leaseholders in areas such as costs of maintenance work and/or buildings' insurance and how such decisions are made
  - whether property managers' and freeholders' choice of contractors and services may be influenced by any links with associated companies and the availability of commissions
  - how leaseholders' rights to self-management work in practice; for example, whether there are difficulties in coordinating leaseholders to work collaboratively, whether self-management gives good outcomes, and whether any problems may be more marked in some areas, such as for retirement properties
  - 'switching levels' and more generally whether competition between property managers is working well
  - the current and proposed redress and complaint schemes available to leaseholders and any problems with those schemes, including the standard of customer service.

- 1.8 The responses that we received that commented on scope were supportive of the OFT view and did not disagree that these are the issues we should examine.
- 1.9 In addition, we received representations that the scope of the market study should be extended to include RPMS where the freehold of properties is owned by local authorities and housing associations.
- 1.10 Having given careful consideration to the representations it has received, the OFT has concluded that it should extend the scope of the market study to include RPMS for leasehold properties where the freehold of the properties is owned by local authorities and housing associations. This includes RPMS provided by local authorities and housing associations as well as by private sector property managers.

## **Next steps**

- 1.11 The first phase of the study, the 'evidence gathering' phase, is expected to last until Summer 2014, during which time we will meet with and gather and assess evidence from interested parties. The final duration and scope of the project will depend on the outcome of this first phase, and we plan to issue a progress statement in Summer 2014. The market study is currently expected to be completed before the end of 2014.
- 1.12 The remainder of this Final Statement of Scope paper provides information on the following:
- the role and possible outcomes of a market study
  - the final scope of the market study, and
  - information on how to provide evidence to the RPMS market study.

## **Transparency**

- 1.13 The OFT is committed to working constructively and transparently with interested parties during the market study. The OFT's website

page<sup>3</sup> (and subsequently, the CMA's website page) will be updated as the market study progresses and will include, amongst other things, further information on timing and contact details for key team members. If you would like to be notified when the website is updated the OFT recommends that you register on the OFT website ([www.offt.gov.uk/subscribe](http://www.offt.gov.uk/subscribe)).

Parties wishing to obtain further information on this proposed market study should contact:

- Senior Responsible Officer: Rachel Merelie on 020 7211 8264, [rachel.merelie@oft.gsi.gov.uk](mailto:rachel.merelie@oft.gsi.gov.uk)
- Project Director: Douglas Cooper on 020 7211 5858, [douglas.cooper@oft.gsi.gov.uk](mailto:douglas.cooper@oft.gsi.gov.uk)
- Team Leader: Darren Eade on 020 7211 8534, [darren.eade@oft.gsi.gov.uk](mailto:darren.eade@oft.gsi.gov.uk)

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<sup>3</sup> [www.offt.gov.uk/OFTwork/markets-work/residential-property-management](http://www.offt.gov.uk/OFTwork/markets-work/residential-property-management)

## **2 THE ROLE AND POSSIBLE OUTCOMES OF A MARKET STUDY**

### **Role of a market study**

- 2.1 The OFT aims to make markets work well for consumers. It achieves this by promoting and protecting consumer interests throughout the UK, while ensuring that businesses are fair and competitive.
- 2.2 Typically, market studies are examinations of whether particular markets may not be working well for consumers and the causes of any problems identified leading as appropriate to proposals as to how they might be made to work better. They take an overview of regulatory and other economic drivers in a market and patterns of consumer and business behaviour.<sup>4</sup>

### **Possible outcomes of a market study**

- 2.3 Market studies can lead to a range of outcomes. They may conclude that a market can be given a clean bill of health and that the initial concerns about consumer detriment are not substantiated by the information collected over the course of the study.
- 2.4 Where the market is found not to be working well, there are several options that the OFT will consider to address the causes. These may include one or more of the following:
- recommendations to the industry, including for example property management companies and freeholders
  - improving the quality of information available to leaseholders
  - investigations into and enforcement action against businesses suspected of breaching consumer or competition law
  - making a market investigation reference

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<sup>4</sup> Further details about the OFT's approach to market studies can be found in the OFT's publication *Market Studies: Guidance on the OFT approach* (June 2010) [www.of.gov.uk/shared\\_of/business\\_leaflets/enterprise\\_act/of519.pdf](http://www.of.gov.uk/shared_of/business_leaflets/enterprise_act/of519.pdf)

- recommendations to Government.

2.5 The above is merely an illustrative list of possible outcomes. The OFT retains an open mind as to which outcomes, or combination of outcomes, may be appropriate to address any concerns that it may identify during the course of this market study.

### **3 FINAL SCOPE OF THE MARKET STUDY**

#### **Responses to the consultation**

- 3.1 The consultation on the proposed scope of the market study closed on 17 January 2014. The OFT received over 250 submissions from a mixture of leaseholders, residents associations, property managers, freeholders, trade associations and action groups. The OFT also engaged with a number of stakeholders across Government, consumer groups and trade bodies to gain their views on the scope of the study.

#### **Submissions on scope**

- 3.2 The majority of respondents to the consultation supported the OFT's proposal to carry out a market study, but a large number (more than 100 respondents) also sought an expansion of the proposed scope to include residential property management services provided to leaseholders where the property freehold was held by registered providers of social housing (for example, local authority councils and housing associations). The primary justification for this expansion of scope was that leaseholders living in properties where the local authority or housing association supply RPMS either directly, or indirectly through separate property management companies, experience similar problems to leaseholders in properties where freeholds are privately owned. In addition, a number of respondents cited the difficulty that can arise from living in mixed tenure developments, where homes can be either owned privately or by social landlords affecting their ability to influence decisions regarding the development and exercise any right to manage.
- 3.3 Some respondents (fewer than 10) also called for the scope of the OFT's work to include an assessment of the legal framework that underpins freehold and leasehold arrangements.
- 3.4 We also received some representations that single properties should be included within the scope of the study (fewer than five) as these dwellings can also be subject to service charges in circumstances where there is communal land being maintained by a property manager.

## **Submissions on other issues**

- 3.5 The majority of the submissions that we received did not comment on the proposed scope of the OFT's work, but were complaints from leaseholders and residents' associations about RPMS. The main complaints being raised by respondents were about the level of service charges, the quality of service provided by property managers and the difficulties in seeking redress. Other concerns also included, but were not limited to, the following issues: the absence of or limited consultation preceding major work on properties, property managers and/or freeholders being unduly influenced by links with the associated company or the availability of commission; poor communication with leaseholders and, insufficient transparency in relation to the financial information being provided.
- 3.6 As well as complaint submissions, we also received a number of submissions from property managers and trade associations. These highlighted a number of self-regulatory initiatives. Many were also supportive of the need to educate leaseholders about leasehold issues, including their rights and obligations as leaseholders, and the need to provide better information to leaseholders, particularly at the point where they are contemplating the purchase of a leasehold property.
- 3.7 All of the complaint submissions and views received in response to the 3 December Scoping Paper will be taken into account and used as part of the evidence for the market study.

## **Clarification of scope**

- 3.8 Some of the responses received (and discussions with stakeholders) suggested that some clarification of the proposed scope was required in relation to the following issues:
- The provision of RPMS where the leaseholder is not resident: is in scope. For example, this includes where a leaseholder rents out the property but is still responsible for paying for RPMS. However, the OFT takes the view that buy-to-let consumers that own multiple leasehold properties should be outside of our scope as these are more akin to the activities of a commercial landlord. Our focus when

considering consumers is on leaseholders that are paying for RPMS. Tenants may pay these costs indirectly through rent, but they are unlikely to bear the full costs of those services. The parties to the contractual arrangements are the leaseholder, the freeholder and the property manager. Further, while the tenant consumes the services provided when occupying the property, the tenant does not have the same rights and obligations as the leaseholder.

- The provision of RPMS in leasehold retirement properties: is in scope. However, the provision of non-RPMS services, such as care services in retirement homes, is not in scope nor are other issues around lease design, including exit charges. The OFT has carried out an investigation into retirement home exit fees.<sup>5</sup>
- Property management services for commercial property: is not in scope. Our focus is on the residential part of the market. We have not in scoping this market study carried out any preliminary investigations or formed any views about whether the commercial property management market is working well for consumers and businesses or not. The CMA may consider carrying out further work to examine commercial property management as appropriate.
- Geographic scope: while both Scotland and Northern Ireland are outside of the proposed scope we will take into account our previous work carried out in relation to the market study into property managers in Scotland<sup>6</sup> and the Law Commission work in Northern Ireland.<sup>7</sup> In addition, any findings and recommendations that we may make as a result of this market study may well have a wider read across and may be equally relevant to consumers and property managers in Scotland and Northern Ireland. We will ensure that we do communicate our findings and recommendations appropriately.

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<sup>5</sup> Details of the investigation can be found at: [www.of.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/retirement-homes/](http://www.of.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/retirement-homes/)

<sup>6</sup> [www.of.gov.uk/OFTwork/markets-work/scottish](http://www.of.gov.uk/OFTwork/markets-work/scottish)

<sup>7</sup> [www.nilawcommission.gov.uk/index/completed\\_projects-2/review\\_of\\_the\\_law\\_on\\_apartments.htm](http://www.nilawcommission.gov.uk/index/completed_projects-2/review_of_the_law_on_apartments.htm)

## Final decision on scope

3.9 The focus of the market study is the provision of RPMS.

3.10 However, having carefully considered all of the responses to the consultation, the OFT considers that leaseholders living in properties where the freeholder is a local authority or housing association, whether RPMS is supplied directly or indirectly, should be included within the scope of the market study too. This is because:

- Local authorities and housing associations are a large and important part of the market.
- The same companies are often providing services (not all local authorities provide in-house property management - some will use private sector property managers). In addition, housing associations sometimes supply RPMS in the private sector.
- The issues appear to be very similar. Respondents said that they were concerned about high service charges, poor service provision, ineffective complaint redress, unnecessary expenditure, etc. Some respondents alleged that some of these issues may be exacerbated. For example, service charges may be more volatile and leaseholders may be unable to switch to an alternative property manager where they live in mixed housing (blocks of local authority flats and housing association developments where some residents have exercised their right-to-buy and others have not).

3.11 Accordingly, the scope of the market study has been extended to include residential property management services where the freehold is held by registered providers of social housing.

3.12 The OFT considers that the legal framework that underpins freehold and leasehold arrangements should remain out of scope. This is so that the study can focus on the provision of RPMS. Leasehold arrangements do not constitute a market as such, though they do of course underpin how the market for RPMS functions. We will consider the legal relationship between leaseholders and freeholders insofar as it impacts on the supply of RPMS.

3.13 Additionally, the OFT considers that single properties should remain out of scope. Typically, single dwelling properties do not directly employ the services of a property manager and issues of maintenance of communal areas do not apply. While leaseholders (and in some cases freeholders) in single properties may be required to pay a service charge to a property manager for the ongoing maintenance and upkeep of communal land, the focus of this market study is the provision of services related to the maintenance and repair of the leasehold property itself.

3.14 We will consider the ongoing maintenance and upkeep of communal land only in so far as it relates to the supply of RPMS to leaseholders resident in a shared property. However, we do not exclude the possibility that any remedies or recommendations that we may make as a result of this market study may have a wider application that may be equally relevant to leaseholders in single properties.

3.15 To summarise, within scope will be the provision of RPMS in:

- Blocks of flats/apartments/retirement properties where the freehold is owned by someone unconnected to the leaseholders who receive RPMS from a property manager
- Blocks of flats/apartments/retirement properties where the freehold is owned by the leaseholders, who all have an equal share and vote some of their number to be directors of a management company, and that use a property manager
- Blocks of flats/apartments/retirement properties where the freehold is owned by the local authority or a housing association who supply RPMS, either directly or through a contracted property manager, to leaseholders contacting the OFT/CMA regarding the market study

3.16 The OFT will be contacting specific bodies directly seeking specific information during the course of the study.

3.17 In addition, interested parties can also submit any comments or evidence that they consider relevant to this market study by email to [propertymanagers.study@oft.gsi.gov.uk](mailto:propertymanagers.study@oft.gsi.gov.uk), or write to us at, until 31 March 2014:

Residential Property Management Services team  
Services, Infrastructure and Public Markets Group  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX,

or, from 1 April 2014:

Residential Property Management Services team  
Mergers and Markets  
Competition and Markets Authority  
Victoria House  
Southampton Row  
WC1B 4AD

Respondents are asked to supply a brief summary of the interests or organisations they represent, where appropriate.

## **Disclosure of information provided to the OFT/CMA**

3.18 The OFT would like to make interested parties aware that it may choose to disclose information that it obtains during the course of this review, including as a result of this invitation to comment. It may also publish it in any document we produce at the end of this review. In deciding whether to do so the OFT will have regard, in accordance with its statutory duties under Part 9 of the Enterprise Act 2002, to the need for excluding, so far as that is practicable, any commercial information relating to a business or any information relating to the private affairs of an individual which, if published, the OFT thinks might significantly harm the legitimate business interests of that business or, as the case may be, the individual's interests (referred to individually and collectively as 'confidential information').

3.19 If you should consider that the information that you will provide contains such confidential information, you should identify each separate item (for example, individual data) or category of information (for example, a row or column of data in a spreadsheet) and explain in each case why you consider it is confidential by reference to the

above test - blanket requests for confidential treatment (for example, the entire submission) will not be sufficient. In the event that the OFT proposes to include any sensitive commercial or personal information in a document that will be published it will, save in exceptional circumstances, contact the relevant persons prior to publication to give them the opportunity to explain why disclosure would cause significant harm and to request excision (or aggregation or generalisation) of any material that will still be sensitive at the time of publication.

3.20 The OFT is also bound by the Freedom of Information Act 2000 (the 'FoIA'). Where a person makes a request in accordance with the FoIA the OFT may have to disclose whether it holds the information sought and the information itself (including confidential information). The FoIA contains exemptions (including one which may exempt confidential information) and the OFT will not have to make those disclosures if an exemption applies. If you consider that any information you provide may be exempt from such disclosures you should say so and explain why. Similarly, to the extent that information you provide constitutes personal data under the Data Protection Act 1998, the OFT will process such data in accordance with that Act.

3.21 The OFT reserves the right to disclose any information it obtain (including confidential information) as may be permitted or required by the Enterprise Act 2002 or any other enactment.