

# Residential Property Management Services

An update paper on the market study

1 August 2014

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## 1. Introduction

- 1.1 In this document, the Competition and Markets Authority (CMA) is providing an update on progress in its market study into residential property management services (RPMS) and seeking views on possible remedial action.
- 1.2 The Office of Fair Trading (OFT) decided to carry out a market study in response to complaints evidence it had reviewed and concerns from other stakeholder contacts about the supply of property management services. The OFT was concerned that some property managers may be overcharging customers, providing poor-quality services or spending money on unnecessary works. It was also suggested that some property managers may not deal effectively with complaints and there were concerns over access to effective redress.
- 1.3 On 3 December 2013 the OFT announced its proposal to conduct a market study on the provision of 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. It published a Scoping Paper<sup>1</sup> calling for views on the proposed scope of the study. Following consideration of the responses received, the scope was extended from RPMS provided purely to privately-owned housing to include RPMS where the freehold of the block in question is owned by a local authority or housing association. The OFT launched its market study on 4 March 2014. The CMA took over the conduct of the market study on 1 April 2014.
- 1.4 The market study is ongoing. The CMA continues to obtain information and engage with stakeholders to progress its analysis.
- 1.5 This update paper sets out the CMA's current views on issues in the market and possible remedial action to improve the performance of the market for RPMS and outcomes for leaseholders and seeks the views of interested parties.
- 1.6 We consider that it is possible to achieve a positive impact on the market through working with the Government and through the industry and are not, therefore, proposing to make a market investigation reference.

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<sup>1</sup> [Property Management Services – A Scoping Paper](#), OFT1513, December 2013.

1.7 Based on our ongoing investigations, as well as any responses to this update paper, and discussions with key stakeholders, the CMA will reach a final decision and publish a full report before the end of 2014.

## 2. Scope of the study

2.1 As outlined in the Final Statement of Scope,<sup>2</sup> this study covers RPMS in England and Wales. It considers the provision of services by property managers relating to communal areas and the structure of a building in the following circumstances:

- blocks of flats/apartments/retirement properties where the freehold is owned by someone unconnected to the leaseholders who receive RPMS from a property manager/property management company (property manager)<sup>3</sup>
- blocks of flats/apartments/retirement properties where the freehold is owned by the leaseholders, who all have a share and vote some of their number to be directors of a management company, which engages the services of a property manager
- blocks of flats/apartments/retirement properties where the freehold is owned by the local authority or a housing association which supplies RPMS, either directly or through a contracted property manager

2.2 The study includes services provided to leaseholders who occupy the premises and also those who rent their properties to tenants. It is not considering single dwelling properties.

2.3 As noted in the Final Statement of Scope, paragraph 3.12, this study is not undertaking an assessment of the legal framework that underpins freehold and leasehold arrangements. We are only considering the legal relationship between leaseholders and freeholders in so far as it impacts on the supply of RPMS.

2.4 Many of the submissions we have received during this study relate to particular disputes between leaseholders and property managers or freeholders. We are not able to advise on individual disputes as part of our work. Market studies examine whether particular markets are working well more generally, taking an overview of regulatory and other economic drivers in a market and patterns of behaviour of those acting in the market. We have

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<sup>2</sup> *Property Management Services – Final Statement of Scope*, OFT1524, March 2014.

<sup>3</sup> Including those blocks where responsibility for property management rests with a right-to-manage or resident management company – see paragraph 3.5.

taken these submissions as part of the evidence base in establishing whether there are any general features that impede the working of the market.<sup>4</sup>

### **3. Property management – an overview**

- 3.1 There are potential concerns over the provision of RPMS that flow from a number of characteristics of the market.
- 3.2 The acquisition of RPMS differs from the acquisition of other services, largely because of the allocation of responsibilities and liabilities within a typical lease. The terms of the lease typically include a requirement to pay ground rent and an obligation on the leaseholder to pay a service charge to cover cleaning, maintenance, repair and similar (property maintenance) of the fabric and shared areas of the building. In addition to the service charge, the leaseholder may be required to make additional contributions to a sinking/ reserve fund to pay for periodic major repairs and maintenance (for example, planned roof or lift replacements).
- 3.3 However, in most cases the responsibility for appointing and instructing the property manager rests with the freeholder. The lease usually obliges the freeholder to provide property maintenance services and so the freeholder usually employs a property manager to administer these functions. On a practical level, this ensures that there is a clear allocation of responsibility to ensure that the property is properly maintained. A freeholder is well placed to do so, including reaching decisions where there are differences between leaseholders.
- 3.4 Leases usually require the freeholder to insure the building. In some cases, the property manager may be responsible for procuring building insurance but more usually the freeholder will procure it, although they may require the property manager to arrange and administer the insurance. Leaseholders are charged for the costs of insurance, usually as part of the service charge.
- 3.5 Exceptions to this normal leasehold structure exist where leaseholders have obtained control of the management of the property through a right-to-manage

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<sup>4</sup> This study has also not attempted to re-examine the issues covered in a previous OFT investigation of the fairness and clarity of contract terms providing for 'transfer fees' charged to occupants of purpose-built, leasehold retirement home properties. That study looked at instances where a leaseholder is required to pay a fee to their freeholder in a broad range of circumstances such as when they sell or rent their property, dispose of it in some other way or otherwise make changes to the occupants of the property. We note that the study did not cover other types of fee payable by leaseholders upon assignment such as contingency fund fees. These are similar charges but typically paid into a ring-fenced reserve fund to offset the cost of irregular and expensive works associated with the repair and maintenance of the development – as such, they involve wider and complex considerations as to the economic benefit that residents as a whole receive in reducing their annual service charge (paragraph 2.6). See [OFT investigation into retirement home transfer fee terms: a report on the OFT's findings](#), February 2013.

(RTM) company, or where a resident management company (RMC) has been established. In these cases responsibility rests with the company board, usually but not necessarily made up of residents, who will usually appoint a property manager to provide property maintenance (or sometimes may choose to self-manage the property maintenance).

- 3.6 We understand the number of RTMs to be quite low. There are 4,954 registered RTM companies, although not all will be active. There are many more registered RMC companies (80,523, although again, not all will be active); these are often established to administer new developments.
- 3.7 We now set out potential concerns about the market. Our study has gathered evidence to test whether or not any aspects of these concerns are found in practice.

### ***Separation of control***

- 3.8 The freeholder (or in the case of new developments, the property developer) usually appoints and instructs the property manager, so the property manager is accountable to the freeholder, while leaseholders will pay the property manager for the services provided. The individual leaseholder's inability to influence or control appointment decisions or determine the work that is done, other than through an RMC or RTM, can be a source of frustration, suspicion and of tension in the relationship between the parties.

### ***Misaligned incentives***

- 3.9 Freeholders do not carry the costs of property maintenance and so they may be uninterested in the quality or value of the service or whether the work undertaken is strictly necessary. Although freeholder investors are incentivised to cover their risks (for example, ensuring the fabric and safety of the building is maintained) and obligations, they may have little incentive to take an active interest in the property managers' activities.<sup>5</sup> Leaseholders, however, since they are obliged to pay for it and experience the quality of the service, have a strong interest in the quality of the service and value for money.
- 3.10 In some cases, freeholders may be vertically integrated with property managers (ie under common ownership and control). There may be some

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<sup>5</sup> However, in many cases freeholders are likely to take account of significant complaints from leaseholders. They may be more responsive where they have an interest in a long-term relationship with leaseholders, for example as may sometimes occur with retirement properties or retirement communities. Sometimes, developers may have concerns about their long-term reputation, for example where undertaking a series of developments and where property management problems are taken to reflect on the developer, whether or not the developer actually has control.

benefits from such arrangements that accrue to leaseholders, but there is also an incentive on the freeholder to appoint the related company as a property manager because that will increase its profit-making opportunities, rather than, necessarily, appointing the property manager that offers the best value for money or quality of service to leaseholders.

- 3.11 In choosing building insurance where freeholders have rights to place insurance, the freeholder may have an incentive to choose an insurance company which offers the highest levels of commissions rather than the best value for money to leaseholders. Property managers may also face incentives in relation to the placing, acquisition and administration of insurance (whether this is placed by them, or placed by the freeholder and the property manager administers this on behalf of the freeholder). While property managers may not directly receive commissions, we are investigating whether they receive fees for administration and similar tasks that are proportionate to the work done, and also their relations with other parties such as brokers who may receive commissions.
- 3.12 In some cases property managers may receive a fee for managing the procurement and administration of contracted works. This might create an incentive to undertake unnecessary works or to increase costs.
- 3.13 If the property manager is vertically related to a contractor, or receives commission, it might also create an incentive to favour that contractor and to place additional work with it.
- 3.14 In addition, leases may allow either the freeholder or property manager to charge for approvals for sub-letting, alterations, keeping pets and so on.
- 3.15 Given that freeholder and property manager incentives are not fully aligned with those of leaseholders, these choices may not always be in the leaseholders' best interests.

### ***Coordination problems – individual leaseholders may have different interests***

- 3.16 In any communal building the objectives of individual leaseholders are likely to be diverse and may be poorly aligned, making it difficult for all leaseholders to be satisfied with outcomes. Examples of such differences might include differing objectives for those leaseholders who live in the property and those who have bought as a buy-to-let investment, those looking to sell their property in the near future and those who are intending to retain it for many years, those who are willing and able to pay for higher standards of service and those who are not, or simply differences in individual priorities and tastes.



Where the objectives of the leaseholders are not aligned, it may be difficult for them to coordinate effectively and act collectively.<sup>6</sup>

### ***Information asymmetries***

- 3.17 Leaseholders and freeholders may not be easily able to monitor the behaviour of the property manager and/or assess the quality of the service they provide.
- 3.18 Even if leaseholders are provided with all of the relevant information they might need, they still may not fully understand or be able to evaluate the information such that they can determine whether work is necessary or whether they are getting value for money.

### ***Weak competition due to lack of pressure from buyers***

- 3.19 If leaseholders (and freeholders) find it difficult to evaluate the performance of their property manager, and it is difficult for leaseholders to influence decisions on the appointment of property managers, it is likely that incumbent property managers will face little threat of being replaced. Significant pressure to replace underperforming property managers is only likely to develop once a high threshold of discontent with the poor performance is passed. Without this threat of switching, competition between property managers will be weak and will not provide the usual incentives it generates for efficiency, innovation and better meeting customer needs.

### ***Property law safeguards***

- 3.20 There are some property law safeguards specifically relating to long leases already in place to protect leaseholders against actions by freeholders or property managers (see also the reference to consumer protection law in paragraph 6.4), but these long lease safeguards may be inadequate, or may not be operating or being used as originally intended. These inadequacies may include:
- poor/untimely information at point of sale
  - poor or weak regulation
  - weaknesses in redress
  - difficulty in exercising RTM

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<sup>6</sup> In addition, some housing developments will have a mixture of leaseholders, commercial leaseholders and/or tenants who could have different objectives or interests. For example, tenants may be more in favour of expensive works as they are not directly affected by the increased costs associated with that work.

## ***Local authorities and housing associations***

- 3.21 The possible concerns identified above may apply not only to RPMS provided to leaseholders in privately-owned housing but also where the freeholder is a local authority or housing association. In addition, some further issues can arise in these cases. We were told that these organisations may have incentives to cross-subsidise other activities from service charges (eg the cost of upkeep of other properties), and may be less efficient or have less robust procurement practices than private sector freeholders. Since local authorities do not run sinking/reserve funds, major maintenance and modernisation works on estates could lead to substantial additional bills for major works on top of usual service charges, particularly where local authorities received funding for upgrades to comply with the ‘decent homes’ standards.

## ***Outcomes***

- 3.22 If the concerns identified above were found to apply in practice, property management services would be unlikely fully to reflect leaseholders’ interests. The misalignment of incentives would create a risk of inappropriate or excessive services being offered, or for costs to be higher than necessary. In addition, if property managers are not subject to close monitoring and control by either leaseholders or freeholders, and competitive constraints are weak, incumbent property managers may be able to increase charges or reduce service quality.

## **4. Process and sources of evidence**

- 4.1 Since the market study was launched, the OFT, and subsequently the CMA, have been gathering information on the RPMS market and have received many submissions from stakeholders including leaseholders, property managers, freeholders and other industry participants.
- 4.2 We have met a wide variety of interested parties at several locations in England and Wales. We have held many meetings with property managers, residents’ associations, industry trade associations, housing organisations, local authorities, government departments, regulators and advisory services (eg LEASE, Housing Ombudsman, HM Courts and Tribunals), property developers, freeholders and campaign groups. We have also conducted roundtable meetings with panels of participants from trade associations, local authority/housing association organisations, campaign groups and leaseholder groups.
- 4.3 Questionnaires were issued to property managers, freeholders, developers, local authorities and housing associations.

4.4 In order to gain a fuller understanding of the experiences and perceptions of all leaseholders, we commissioned a telephone survey conducted on our behalf by Ipsos MORI. The survey interviewed 1,050 leaseholders from around England and Wales.<sup>7</sup>

## 5. Early findings

5.1 We now set out, based on the evidence we have gathered and reviewed to date, some of the early findings coming from our study. In this paper, we do not report and evaluate all the evidence received, nor do we seek to cover every issue raised with us. A fuller account will be provided in our final report. The purpose of this update is to indicate our current views in broad terms and provide a basis for the consideration of possible remedial measures.<sup>8</sup>

5.2 We are also mindful that the evidence we have received will reflect the natural tendency for those leaseholders who have experienced problems to contact us. One of the reasons for undertaking a survey of leaseholders was to allow us to gain a representative view of the perceptions of all leaseholders. Nonetheless, perceptions need to be treated with some caution; leaseholders may not be well placed to evaluate value for money and so there may be discontent even where essential works are efficiently and competitively completed. On the other hand, leaseholders may be poorly placed to assess cases where they are in fact receiving poor value for money.

5.3 For these reasons, we attach more weight where evidence is supported by multiple sources.

5.4 We have found that market outcomes for some leaseholders can be poor, and that there is reason to be concerned about some practices and outcomes in the market. However, our leaseholder survey indicates that perceptions of such problems are far from universal. Many leaseholders appear to be content with the service that they receive, and we have received evidence to suggest that the existing checks and balances in the market often work sufficiently well to protect consumers.

5.5 We have received qualitative evidence suggesting that there are sometimes poor outcomes for leaseholders, including complaints of:

- excessive/unnecessary charging for services arranged by property managers

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<sup>7</sup> We will publish the leaseholder survey report on the [CMA website](#) in the near future.

<sup>8</sup> We have not found any substantial differences in results between regions or between England and Wales.

- poor service
- little transparency
- poor communication
- flawed procedures in respect of consultations on major works
- vertical integration or relations between property managers and contractors or between property managers and freeholders resulting in poor value for money (including allegations of practices in relation to building insurance – for example, where it is believed freeholders receive commissions, but also where property managers, or related companies such as brokers, receive ‘payments’ and margins for procurement and administration)
- poor complaints handling and ineffective and expensive redress

5.6 Our leaseholder survey (conducted by Ipsos MORI)<sup>9</sup> found just over half of leaseholders (52%) who had raised an issue, and had received an outcome, were dissatisfied with how it was handled.

- The survey found 64% of leaseholders reported the overall service they received was very/fairly good. However, 1 in 5 (20%) leaseholders rated the overall service as very/fairly poor with 9% of leaseholders reporting the overall service was very poor. 42% of leaseholders reported ever having reason to be dissatisfied with their property manager (57% for local authority leaseholders).
- Our leaseholder survey found just over half of leaseholders (52%) strongly agreed or tended to agree that the property manager provides value for money. 28% disagreed their property manager provides value for money with 14% saying they strongly disagree.

5.7 Leaseholders with a right to manage company (RTMC) or RMC at the property, thus having a degree of control over property management services, were more likely (78%) than those with no RTMC/RMC (46%) to agree that their property managers provide value for money. They were also more likely to rate the overall service as good (83% compared with 58% for non-RTMC/RMC properties).

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<sup>9</sup> There is no comprehensive source of profile information available for the target population of leaseholders in England and Wales. This means that the survey results presented should be taken as indicative. So, for example, care needs to be taken when making comparisons of the survey results between the different leaseholder groups.

- 5.8 However, we also heard of cases where RTM is difficult to obtain, or badly run, or is not representative of all leaseholders, for example if the RTM board is dominated by some leaseholders with different objectives from other leaseholders.
- 5.9 All stakeholders, including leaseholder representatives, agreed that leaseholders have poor awareness of their obligations as leaseholders. We found that leaseholders generally do not understand how arrangements for property management systems work before they purchase the property, nor do some of them understand fully their obligations to pay, and the nature of variable service charges. Even where leaseholders are given information (such as in the conveyancing stage), we found that many leaseholders do not fully understand their future obligations to pay service charges.
- 5.10 There appears to be a low level of switching between property managers. Where switching occurs, it is mainly prompted by significant dissatisfaction with the current property manager's performance. This can occur if leaseholders manage to persuade their freeholder, who may have little incentive to switch, to take action, or if they persuade the board of their RTM/RMC to consider switching. Freeholders do not routinely look across the market, so switching does not normally appear to be driven by a desire to ensure that leaseholders are getting best value for money. Because of the difficulties leaseholders face in coordinating and exercising control and choice, competition between property managers for existing contracts appears to be weak.
- 5.11 Where switching does occur, price competition between property managers tends to focus on the management fee. This may allow other less transparent charges to be raised. For example, the property manager may have discretion over the charges for consents (such as authorising sub-letting, conversions or keeping pets) where the lease delegates authorisation decisions to the property managers.
- 5.12 There is more evidence of active competition between property managers to be appointed at new developments, except where the developer is vertically integrated with a property manager or there is some other long-term relationship between the developer and a property manager. However, some new developments have tripartite leases which specify the property manager. In some cases the incumbent can only be displaced through the exercise of the RTM, if available.
- 5.13 Some of the examples of discontent have arisen in cases where leases have been poorly drafted, for example if they are silent on crucial aspects of

responsibilities. This can mean disagreement between leaseholders and the property manager over the scope of work and how work is paid for.

- 5.14 We have heard a lot of criticism around the section 20<sup>10</sup> consultation processes for major works, and for long-term contracts. We were told by many parties that the process was inflexible (eg for urgent and essential works or where prior agreement to the works and choice of contractor had already been obtained) and that consultation thresholds were set too low. We also heard of ways in which property managers might sometimes manage to avoid consultations, for example by the use of management contracts lasting just less than a year.
- 5.15 A number of complaints concerned local authorities and housing associations. Examples of these included a lack of transparency or concerns over efficiency and cost control, particularly in the context of major estate upgrades such as Decent Homes funded initiatives. Overall the evidence we received in relation to leaseholders in local authority and housing association properties was mixed. While processes for transparency and accountability, and internal complaints-handling mechanisms, tended in most cases to be better than in the private sector, levels of leaseholder satisfaction with service quality and value for money (as shown by our leaseholder survey) were lower. The reasons for this are not clear. We were told of cases where particular individual local authorities were believed to be providing very poor standards of service or poor value for money with little or no engagement with leaseholders and little transparency or accountability. Other possible explanations for the low levels of leaseholder satisfaction include: poor service or inefficiencies; the original right-to-buy leaseholders being more sensitive to service charges as they are more likely to be on comparatively low incomes; or different expectations among leaseholders when dealing with these bodies as they expect a higher degree of social responsibility rather than property management being a purely commercial exercise.
- 5.16 We noted that some concerns expressed at the outset of the study have not been supported by the evidence we have collected:
- We have considered whether residents of leasehold retirement properties may be particularly vulnerable to adverse outcomes, and whether the provision of specialist services could raise the potential for additional

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<sup>10</sup> The law requires that leaseholders paying variable service charges must be consulted before a landlord carries out qualifying works or enters into a long-term agreement for the provision of services. Detailed regulations have been produced under section 20 of the Landlord and Tenant Act 1985 (as amended by section 151 of the Commonhold and Leasehold Reform Act 2002) which set out the precise procedures landlords must follow; these are the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations). Similar regulations have been enacted in Wales.

harmful practices (such as aspects of charging in relation to alarm and security systems or the provision of accommodation for on-site managers). However, we received few complaints specific to retirement property issues, and according to our leaseholder survey, leaseholders in retirement properties had higher levels of satisfaction than other leaseholders with property management services.

- While there is some use of tied contractors and concerns over vertical integration, the use of related contractors seems less prevalent now than it was a few years ago. The examples of inflated costs arising from incentives to use related companies that we heard about tended to relate to historic practices. We note that this appears to be driven by a voluntary reduction of such practices in the industry (and compliance with industry codes of conduct) and there is still potential for such practices to re-emerge where vertical integration or other relations between companies exist.

## **6. Proposals for remedial measures**

6.1 We now consider possible areas of remedial action to address the problems we have provisionally identified in the market. The CMA wishes to seek the views of interested parties on these remedy proposals. Issues relating to these remedy proposals, how they could work together as a remedial package, and also questions relating to any alternative remedies are set out in paragraphs 6.11 and 6.12.

6.2 Some of the concerns that we have identified stem from the distinction in property law between freehold and leasehold interests and the differences in incentives to which they give rise. As noted in paragraph 2.2, we are not undertaking an assessment of the property law framework in England and Wales. We have therefore considered how the market for RPMS might work better within the context of the existing leasehold system.

6.3 We consider that in a well-functioning market:

- Leaseholders would understand their responsibilities and rights prior to purchase and would have adequate advance information (eg on service charges, planned major works and sinking fund status) to have a good understanding of the ongoing costs of owning leasehold properties
- Leaseholders would be able to choose to act together if dissatisfied with their current service, through an RTM/RMC company or representative organisation (eg residents' association) in order to make or influence decisions on the appointment and replacement of property managers and

on the extent and nature of work undertaken. However, the interests of freeholders would still be covered, so as to ensure that the long-term value of the freeholder's investment was maintained (eg it must still be properly insured, there should be adequate long-term maintenance of the building structure, and health and safety obligations as well as all obligations in the lease must be met).

- Leaseholders would receive or could obtain sufficient and clear information so that they could monitor property managers' actions and charges, and would be able to assess whether these actions were reasonable and costs represented value for money. Through this, property managers would be incentivised to provide a good service and value for money, both through the threat of switching to other suppliers, and through effective redress systems.
- There would be effective communication between property managers and individual leaseholders.
- However, when dealing with communal blocks of flats, there will always be a need to compromise as leaseholders will have divergent views on what level of services and charges are appropriate. To ensure that the boards of RTMs/RMCs etc properly represent the views of the majority of leaseholders and no leaseholder is treated unfairly or unreasonably, there would be rules on governance, transparency, accountability and redress.

6.4 In determining an appropriate approach for remedies, we noted above that many leaseholders are content with the service and value for money they receive. We recognise that these perceptions may not always be fully informed, for example leaseholders may not know if the charges they face are not at competitive levels, but the survey results allow us to put the complaints we have received into a context of overall market perceptions. For that reason, we are cautious about measures that will increase burdens and costs. Our current view is that the market does not warrant widespread reform, but rather targeted measures to improve workings within the current model. We also note the existence of current redress systems and/or safeguards through:

- Existing property law legislation to protect long leaseholders, which includes obligations on transparency and consultation, access to ombudsmen in some cases, legal redress through the FTT.
- Industry self-regulation – the main trade association for property managers, ARMA, is implementing a new code of conduct ARMA-Q with an independent enforcement panel. We are told that the industry is incurring considerable effort and cost in adopting the necessary standards.



Other relevant trade bodies include RICS, Association of Retirement Home Managers etc which have their own standards and codes of practice. However, many property managers are not members of these associations.

- General consumer protection law such as the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) which apply to traders. Generally, the CPRs prohibit unfair commercial practices which distort consumers' decision-making. They place a general duty on traders not to trade unfairly when dealing with consumers and set out broad principles for determining when commercial practices are unfair, including misleading actions or misleading omissions (omitting information needed to make informed decisions). The UTCCRs protect consumers from unfair standard terms in their contracts with a trader.<sup>11</sup>

6.5 Given these considerations (and also taking into account the practical difficulties in gaining support for and progressing primary legislation), we are currently minded to focus our proposals on remedial measures which can be achieved through amendments to existing legislation, including proposals on improvements to current redress systems and safeguards, and developments in self-regulation.

6.6 In order to address the problems we have provisionally identified, we therefore propose a set of possible remedies that are intended to work in the ways broadly described in Table 1 below.

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<sup>11</sup> The CPRs and UTCCRs can be enforced by the CMA or Local Trading Standards Services (TSS) to protect the interests of consumers in general. In addition to action by the CMA or other enforcers, under the UTCCRs, individual consumers have their own rights to take action.

TABLE 1 **How remedial actions are intended to work to address the problems provisionally identified**

<i>Issue</i>	<i>Causes of the problems in the market</i>	<i>How remedy proposals are intended to work</i>
Separation of control	Leaseholders' lack control over property managers. RTMs and RMCs are exceptions to this.	We are considering measures that would allow leaseholders easier recourse to RTM and encourage the use of RMCs, and which are intended to make these work more effectively. We are also considering options which allow leaseholders influence over the appointment of property managers without going to the extent of acquiring RTM. We are also considering measures to increase transparency so that property managers can be more easily held to account with recourse either to redress or means to allow leaseholders to influence their freeholder, RTM or RMC to market test the property manager.
Misaligned incentives	Freehold <i>investors</i> may have little incentive to take interest in quality and value for money of property manager's activities. Therefore it may be difficult for leaseholders to influence the freeholder because their interests are not aligned. Property managers may also have incentives which increase their profit opportunities (or those of related companies) at the expense of leaseholders.	We are considering measures that place greater control with leaseholders. We are also considering measures designed to provide greater transparency on certain incentives such as fees and commissions on work done and insurance, or on the use of related companies.
Coordination problems among leaseholders	Individual leaseholder incentives can vary significantly creating disagreement about what work should be carried out or prioritised. This means even with an RMC or RTM individual leaseholders may not have a level of control they are satisfied with.	We are considering measures to facilitate the creation and functioning of RTM and RMC companies, and residents' associations, and to provide more information on leaseholder rights and responsibilities.
Information asymmetries	Leaseholders may not be provided with or may not fully understand information given by property managers and so may be unable to determine whether work is necessary or could be provided more economically. They may not be easily able to monitor the behaviour of the property manager and/or assess the quality of the service they provide.	We are considering remedies designed to ensure greater clarity and availability of information, including information so that leaseholders can assess costs and service (of a particular property manager, and of owning a leasehold property) in advance and to facilitate benchmarking of services and management charges between property managers.
Weak competition due to lack of pressure from buyers	Significant pressure to switch property managers is likely to be driven only by significant levels of discontent rather than by the availability of better offers in the market. Consequently the competitive constraints on incumbent property managers may be relatively weak.	In order to promote greater competition to ensure the quality and value of incumbent property managers and to facilitate switching where appropriate, we are considering measures that could promote the ease of switching and increase its potential use. In part, this should arise from some of the measures which give more control or influence to leaseholders (and easing their coordination), aligned incentives and better information.
Safeguards	Possible inadequacies of the safeguards in place to protect leaseholders, so consultation, complaint and redress options may not be effective.	We are considering measures to improve the functioning of existing redress mechanisms and to extend the scope of these systems or create effective additional or alternative safeguards.

6.7 In Table 2, we set out a number of remedies proposals which we are currently considering. In addition, we will consider further, generally, how the consumer protection legislation that we and TSS have the power to enforce may complement or fill in the gaps of the specific property law legislation relating to long leaseholders and assist in making the markets work well for consumer leaseholders.

TABLE 2 Remedies proposals

<i>Characteristics giving rise to competition concerns</i>	<i>What is the problem we are trying to solve?</i>	<i>Remedy option</i>	<i>How the remedy will work/pros and cons/questions for consultation</i>
Information asymmetries	Leaseholders do not fully understand the implications of being a leaseholder	<p>1. Better guidance to prospective purchasers on what leasehold entails. Property developers/leaseholder/freeholder/estate agents are required to provide better guidance/instruction to new purchasers on service charges, sinking funds, future works etc. before purchase.</p> <p>To be provided before the conveyancing stage.</p>	<ul style="list-style-type: none"> <li>• Enable the leaseholders to make a more informed purchase decision and be more aware of the ongoing costs of being a leaseholder.</li> <li>• Help to align incentives between leaseholders, reducing differences caused by different understanding. Information provided would need to be consistent for all leaseholders. Should reduce the number of complaints about poor awareness of the leasehold system.</li> </ul> <p>To be effective, the leaseholder must receive, consider and understand the information, ideally at the point where they are still searching the market.</p> <p>With regard to what currently happens, the property management company will usually put together a 'management pack', providing such details as service charge levels and pending works, on behalf of the vendor. The pack is supplied to the prospective purchasers' solicitor. The evidence we have suggests that in many cases the disclosure of information at this stage can be poor.</p> <p><b>Views are requested on the feasibility and costs of a remedy of this nature, who it would apply to and how this would be implemented.</b></p>
Information asymmetries	When conveyancing is carried out, information relating to service charges and lease terms may not be explained in sufficient detail. This means that the leaseholder is less able to assess the full costs, from ownership of a leasehold property.	<p>2. This may be addressed by developing a standard set of questions that should be answered when conveyancing is carried out for a leasehold property, including plans for future maintenance work. This could be supplemented by a list of 'questions that a leaseholder requires answered', that is included in guidance provided to prospective leaseholders, before conveyancing.</p>	<p>Although relatively late in the purchasing process, it is important that a leaseholder is made fully aware of all lease charges, fees and the costs of expected future maintenance. Our findings from the evidence that we have gathered suggests that sometimes this is the first time that the leaseholder will become aware of these details and it is an important point before the commitment to purchase is made. The issue may be more significant for low-cost conveyancing operations.</p> <p>This might be combined with placing a specific duty to provide appropriate information.</p> <p><b>Views are requested on the most practical way of achieving the remedy.</b></p>
Information asymmetries	The services provided by property management companies and detail of work carried out may be unclear to leaseholders.	<p>3. A clear statement of property maintenance strategy should be provided by the freeholder (or property manager), including an estimate of expected future costs. This would help to give clarity to leaseholders about what and how the services they pay for will be provided.</p>	<p>Some property management companies already do this well but the picture across the sector is mixed. This remedy would improve transparency and would be strengthened by comparison with actual costs incurred in the past.</p> <p>It would also be useful to be able to compare with typical costs in other similar size and age properties. Would work in combination with information disclosure remedies and right to approve the property management company.</p> <p><b>Views are requested on the content of this disclosure and the feasibility and costs of implementation.</b></p>
Coordination problem between leaseholders	Leaseholders do not understand their responsibilities or the redress that is open to them.	<p>4. Property management companies to have more of a role in continuing education of leaseholders/ensuring information is provided in an accessible form.</p>	<p>Property management companies are in a strong position to provide leaseholders with the information that they need, so are well placed to provide education, contributing a solution. This has the potential to bring leaseholders together and permit a dialogue that would assist provision of meaningful information.</p> <p><b>Views are requested on the feasibility and associated costs of this remedy and how property managers could be incentivised to provide continuing education.</b></p>

<i>Characteristics giving rise to competition concerns</i>	<i>What is the problem we are trying to solve?</i>	<i>Remedy option</i>	<i>How the remedy will work/pros and cons/questions for consultation</i>
Coordination problem between leaseholders	Leaseholders are not incentivised to consider the benefits of collective action.	5. Improved information to be provided by property management companies to leaseholders about their rights and the benefits of working collectively in their block.	Some property management companies already do this well but the picture across the sector is mixed. This would give a better opportunity for leaseholders' incentives to be aligned.  Better information could be facilitated by better use of the property management companies' websites and should not be costly to implement.  <b>Views are requested on the feasibility and costs of a remedy of this nature, and whether property managers will or could be incentivised to implement this.</b>
Misaligned incentives	Leaseholders' engagement/co-ordination may be poor, making it more difficult to align leaseholders' interests, which in turn results in poor decision-making processes.	6. Measures to encourage earlier involvement: <ul style="list-style-type: none"> <li>• Encourage leaseholders to be engaged in collective action from when they purchase the lease</li> <li>• Promote resident management companies in new contracts</li> <li>• Make it compulsory for the property management companies/freeholders to recognise the residents' associations and/or other leaseholder representative body.</li> </ul>	This should enable more effective communication and decision-making by leaseholders. We note that resident management company leaseholders' satisfaction is lower where communication is poor/ineffective.  This would require a representative body already to be in place to be effective.  <b>Views are requested on the practicability of this measure and how, in practice, leaseholder coordination may be encouraged.</b>
Separation of control Information asymmetries	Leaseholders are unable to understand and assess the service being provided by the property management company and thus assess value for money.	7. Require property management companies to provide leaseholders with key information, including both financial information and details of past and expected work, in a standardised format.  Information included could show management fees, details of the work undertaken/services provided, eg over the last three years, a breakdown of the individual items of expenditure and a comparison of the costs of other contactors where additional quotations were sought.	This remedy would increase information available to leaseholders to assess the service provided by property management companies.  This would mitigate the effect of this feature of the market by enabling leaseholders to better assess whether they are receiving value for money, and would enable leaseholders to challenge service charges and management fees more easily.  Detail to be included, the process for ensuring the template is followed and possible sanctions for non-compliance to be agreed.  <b>Views are requested on how a template or standardised format could be agreed and whether this might be achieved through a voluntary code.</b>
Misaligned incentives Information asymmetries (Local authorities/ housing associations)	Leaseholders are unable to understand and assess the service being provided by the property management company and the value for money. Greater incentives are needed to deliver higher-quality services and efficiency.	8. Require housing associations/local authorities to publish more information about key performance indicators (KPIs)/ benchmarking standards of performance. Potentially include the mandatory publication of the results of satisfaction surveys and/or extending resident surveys to help determine residents' priorities.	Increased transparency would provide greater accountability. By producing more information that is specific to local authorities/housing associations, leaseholders would be in a stronger position to assess value for money and challenge service charges/quality of service.  This would be more useful if the KPI format was consistent between local authorities/housing associations.  <b>Views are requested on the feasibility and costs of a remedy of this nature.</b>
Misaligned incentives	Property management companies may set very high	9. Require full disclosure of all supplementary charges to leaseholders and freeholders.	This information would improve transparency and, combined with other remedies, would help leaseholders to better assess the value for money of services provided.

<i>Characteristics giving rise to competition concerns</i>	<i>What is the problem we are trying to solve?</i>	<i>Remedy option</i>	<i>How the remedy will work/pros and cons/questions for consultation</i>
Information asymmetries	supplementary charges for leaseholders (ie charges not covered in the service charge or management fee, such as administration and consent charges) which are not transparent, and not subject to competitive pressures.		<p>Some property management companies already do this well but the picture across the sector is mixed. Better information could be facilitated by better use of the property management company websites and should not be costly to implement, although charges and coverage may vary across properties depending on the terms of the lease.</p> <p>Leaseholders may still find it difficult to assess whether charges are reasonable. If some comparative information for different types of charges were available, it would help this assessment, but associated administrative costs would be material. It has not been considered practical to consider a database for this information.</p> <p>Information would also need to be available at an early stage of the purchase process.</p> <p><b>Views are requested on ways that such benchmark information might be collected and made available, and the costs of doing so. Where charges are set by freeholders but collected on their behalf by the property manager, should these be included in the remedy?</b></p>
Misaligned incentives Information asymmetries	The cost of building insurance may be unnecessarily high or the cover excessive.	<p>10. Require full disclosure by the freeholder or property management company (whoever has placed the insurance) so that leaseholders can see that:</p> <ul style="list-style-type: none"> <li>• the market has been tested</li> <li>• the freeholder/property manager has got the best deal</li> <li>• details of what is covered are included</li> <li>• whether any commissions/fees or other incentives have been taken (and if so how much)</li> <li>• whether the freeholder/property manager has any links to any of the other parties involved (including insurers and brokers) and if so similarly disclosing any commissions/fees or other incentives</li> </ul>	<p>Currently, the provision of information between the freeholder and/or the property management company is not subject to regulation by the Financial Conduct Authority.</p> <p>The upfront and timely provision of this information to leaseholders would improve transparency and, combined with other remedies, would help leaseholders to make more informed decisions and improve redress. Commissions and fees may be appropriate but parties should disclose to leaseholders who pay for the insurance what incentive payments were made and what work is done in return for them.</p> <p>Better information could be facilitated by better use of the property management companies' websites and should not be costly to implement.</p> <p><b>Views are requested on whether disclosure should be recommended, and how requirements to disclose could best be implemented and enforced.</b></p>
Misaligned incentives (local authorities/housing associations)	There is potential for local authorities/housing associations to use property management income to cross-subsidise other tenants or services.	11. Require local authorities and housing associations to separate out the costs of supplying services to tenants that are not property management services for communal areas and to publish this cost allocation.	<p>This would require housing associations/local authorities to make available more information about the costs of the property management services they provide. This remedy would directly address the information asymmetry in the market regarding the allocation of the costs of supplying services to tenants versus the cost of supplying property management services to communal areas.</p> <p>There may be issues of common costs or economies of scale/scope in providing services across a number of properties and between tenants and leaseholders within properties that could make cost allocation very difficult and costly to achieve.</p> <p><b>Views are requested on the practicability and cost of requiring such disclosure.</b></p>
Misaligned incentives	Property management companies might carry out excessive or unnecessary works in order to increase their	12. Require property management companies (individually) to set fixed fees for elements of work such as routine management (collecting service charges, routine cleaning, gardening and doing accounts, etc) and for management	One of the existing industry codes provides that where there is a service charge, basic fees are usually quoted as a fixed fee rather than a percentage. However, there are also exemptions from these provisions in the code that allow extra fees to be charged, and this includes works.

<i>Characteristics giving rise to competition concerns</i>	<i>What is the problem we are trying to solve?</i>	<i>Remedy option</i>	<i>How the remedy will work/pros and cons/questions for consultation</i>
	commission payment, where commission is earned based on cost of work carried out.	of major works (replacing windows, decorating common areas, etc) rather than a proportion of costs (unless written in the lease).	<p>In some cases leases specify that management charges are calculated as a proportion of costs.</p> <p>This would better balance incentives, removing the incentive for a property management company to commission expensive works. Fixed fees seek to better reflect the cost of work involved, while also potentially increasing transparency for leaseholders.</p> <p>This could be supplemented by enacting parts of the Landlord and Tenant Act 2002 legislation which have not yet been implemented, eg breakdown of service charges.</p> <p><b>Views are requested on the relative merits of fixed and percentage fees, the practicability of this measure and how it could be applied and enforced beyond the existing terms and coverage in existing industry codes. Are there circumstances where this could deter necessary works? Might this remedy have the potential to cause other costs to increase? Are there any other fee structures which could better align property manager and leaseholder interests?</b></p>
Information asymmetries	Leaseholders may not be getting value for money because the property management company is vertically integrated through links between freeholders/property management companies/contractors.	13. Require full disclosure of commercial links between freeholder, property management companies and contractors.	<p>Having access to the information would provide some accountability. This remedy would expose the potential for detriment arising from the misaligned incentives of leaseholders and freeholders, but does not force a change in behaviour. One of the existing industry codes states that it is good practice to disclose commercial links fully but it is not a mandatory requirement of the code.</p> <p>To be effective, this remedy would need to work with other remedies for dispute resolution, or leaseholders would be unable to take action. The property management company might be requested to show that costs are no more than if using an unrelated company.</p> <p>An alternative remedy would be to prohibit property management companies from having links to the freeholder or contractors, though this is thought to go too far as it would prevent efficiency benefits that can arise (see Appendix A).</p> <p><b>Views are requested on the form and adequacy of the disclosure proposed and how this can build on existing code obligations.</b></p>
Separation of control Misaligned incentives	There is little pressure to switch property management companies, which may not be changed for extended periods, despite possible leaseholders' dissatisfaction and/or absence of market testing to ensure that the best value is being secured.	14. Require freeholders to put property management service contracts out for tender every three to five years.	<p>This would ensure that freeholders periodically test the market for a competitive deal and extend the influence of leaseholders. This should incentivise incumbent property managers to strive to be competitive.</p> <p>To be effective, it would need to be adopted in combination with remedies providing information and giving leaseholders some influence over the choice.</p> <p>Administrative costs would need to be considered for small contracts, so a minimum threshold might be set, eg EU public sector tender thresholds. Consideration would also have to be given to how this was enforced.</p> <p><b>Views are requested on whether it would be appropriate to require freeholders to retender on a periodic basis and, if so, the frequency of such retendering.</b></p>
Separation of control Misaligned incentives	Leaseholders have little influence or effective control over quality or price of service provided by property management companies, once the	15. Where leaseholders secure 50% majority, require the freeholder to retender for a new property management company, where leaseholders do not want to exercise RTM.	<p>This creates some rights of accountability and redress for leaseholders, by providing some control over property management, through required retendering.</p> <p>This would help to address the situation where leaseholders are dissatisfied with the incumbent property management company, but do not want to take on the responsibility for managing the property.</p>

<i>Characteristics giving rise to competition concerns</i>	<i>What is the problem we are trying to solve?</i>	<i>Remedy option</i>	<i>How the remedy will work/pros and cons/questions for consultation</i>
	freeholder has appointed the property management company.	A 50% majority would be required, as in the remedy above.	One issue to decide would be the frequency of retendering that could be required; a minimum period, perhaps three years, may be appropriate. The additional cost from retendering would need to be considered.  <b>Views are requested on the appropriate frequency for allowing retendering to be requested and whether there should be limits on the properties for which this arrangement was introduced.</b>
Separation of control Misaligned incentives	Leaseholders have little influence or effective control over quality or price of service provided by property management companies, where the freeholder appoints the property management company.	16. Permit leaseholders to veto/approve choice of property management companies.  A 50% majority would be required, as in the remedy below.	This remedy would not apply to new developments. It would only apply in situations where the freeholder is proposing to change the existing property management company.  The remedy would need to be combined with other measures to facilitate changing the property management company.  This does not realign incentives but gives leaseholders some control over property management, without requiring full RTM. This could be strengthened by extending the power of approval to agreement on works necessary, within designated limits.  Practicalities of the level of support to achieve change and how the mechanism would be initiated would need to be determined.  <b>Views are requested on the practicality and reasonableness of this remedy.</b>
Safeguards Misaligned incentives	Difficulty in reaching the RTM threshold, due to absentee leaseholders and 25% retail space in development being used to prevent RTM.	17. This would require a change in the RTM rules.	This change should make it more difficult for freeholders to obstruct the RTM process. Our survey showed that leaseholder satisfaction is higher where there is an RTM company.  Not all leaseholders will wish to participate and may prefer to leave things as they are or appoint a different property management company. Lowering the threshold below 50% of those eligible (or those voting) could harm such leaseholders' interests. The interests of leaseholders/tenants of retail space are also relevant.  The effectiveness of the remedy would depend on take-up. It would also be important to ensure that leaseholders understood the responsibilities of being a director in an RTM company.  <b>Views are requested on whether and how much the RTM threshold should be changed and how to safeguard the interests of other leaseholders or other interested parties.</b>
Misaligned incentives	Threshold for consultation in section 20 (Landlord and Tenant Act) does not work well: can be too low for small blocks and too high for large blocks. Also needs to rise in line with some measure of the cost of living. There are also ways that consultations can be avoided via loopholes, eg by the exclusion of management	18. Review/revise section 20 re circumstances under which consultations are required.	There are various issues with the section 20 process, limiting leaseholders' ability to influence the behaviour of the freeholder/property management company. In particular, the section 20 consultation process is cumbersome and time consuming; the dispensation process is also cumbersome, especially where the work is urgent; leaseholders have rights to consultation but are not given any control over the extent or costs of the works; the £250 threshold is low and/or inflexible and the right of leaseholders to nominate contractors may be ineffective as they may lack the necessary expertise to be able to nominate credible alternatives.  Revisions, including addressing loopholes, would make the section 20 process more useful for leaseholders to express their views and to exert some degree of control and challenge in relation to the costs incurred. There may be circumstances in which it may be appropriate to forgo a full consultation procedure, but it would be important to ensure that this did not create any loopholes and leaseholders' interests were still protected.  <b>Views are requested on the most appropriate revisions to the section 20 process.</b>

<i>Characteristics giving rise to competition concerns</i>	<i>What is the problem we are trying to solve?</i>	<i>Remedy option</i>	<i>How the remedy will work/pros and cons/questions for consultation</i>
	contracts lasting less than a year.		
Misaligned incentives Information asymmetries	Standards can be low and variable and self-regulation could be improved.	19. Greater self-regulation by property management companies to improve understanding and transparency. Encourage membership of ARMA-Q/RICS or other statutory/non-statutory self-regulatory schemes or codes.	<p>This should increase the incentive for good performance, thus helping property management companies to gain a competitive advantage from performing well. Higher standards could be encouraged by an agreed scheme/code.</p> <p>Some strengthening of current organisations' monitoring and enforcement may also be required.</p> <p>An alternative could be compulsory regulation (see Appendix A).</p> <p><b>Views are requested on how effective self-regulation is in this sector, the practicability of this measure, how property managers could be encouraged to adopt this and the likely extent and impact of uptake. We are also interested in the costs and whether an advantage could be gained by property managers who do not comply.</b></p>
Safeguards Misaligned incentives	Limitations of the current redress mechanism, which may be too costly and complex for some leaseholders to access. This discourages their use when leaseholders are faced with poor service or poor value for money.	20. There needs to be a cheaper and quicker alternative to FTT. Possible improvements could be the introduction of early neutral evaluation, improved funding for LEASE and/or a possible extension of the role of the Housing Ombudsman to be able to consider leaseholders' service charge issues.	<p>This would help to improve rights of redress for leaseholders in situations where poor service or value for money is an issue.</p> <p>Existing redress mechanisms may not be working as intended. Their effectiveness may also be limited by the freeholder, property management company and leaseholder not being sufficiently engaged in the process of securing effective redress for leaseholders.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Housing Ombudsman role is focused on tenants, not leaseholders.</li> <li>• While LEASE already offers free legal advice to leaseholders, freeholders and property management companies, awareness of this appears to be low.</li> </ul> <p>Greater awareness of advice available would be beneficial, particularly in relation to RTM and advice to parties in dispute. Any advice provided should be neutral and without prejudice to the merits or otherwise of the substance of the dispute.</p> <p>The form of any further redress systems necessary would need to be determined.</p> <p><b>Views are requested on the most appropriate form of faster redress and its associated cost implications.</b></p>



### ***Other remedies we have identified***

6.8 In addition to the recommendations set out above, we have also considered some other alternative recommendations.

- statutory regulation of property managers
- new unified code of conduct for the sector
- requirement for property managers to hold a relevant property management qualification
- capping of service charges for local authority tenants under Decent Homes Initiative funded works
- prohibiting vertical integration/use of related companies
- database of benchmark charges
- recommendations relating to private sector provision of RPMS to local authorities

6.9 As set out in Appendix A, where we present our provisional views on these alternative remedies, we are not currently minded to pursue them, although we would be interested to receive views. Our preliminary thinking is that the remedy proposals in Table 2, if implemented and effective, would improve competition in this market sufficiently. If the package of remedies based on those proposed in Table 2 proves insufficient or is not implemented (or only partially implemented), then it may be necessary to consider further our assessment of some of the alternative recommendations that we have identified.

### **Market investigation reference**

6.10 Market investigations are more detailed examinations into whether there is an adverse effect on competition in the market(s) for the goods or services referred. Our current thinking is that it is not necessary to refer RPMS for a full market investigation. We think we can achieve a positive impact on the market through working with the Government and through the industry (by means of recommendations in the market study for amendments to existing legislation and developments in self-regulation).

## **Views on possible remedies**

6.11 As noted in paragraph 1.5, the CMA wishes to obtain the views of interested parties on these remedy proposals. Specifically, we would like to receive views on:

- Whether respondents consider that these remedies will provide an effective and proportionate solution to the problems that have been provisionally identified. This would include whether they are practicable, whether they would have the intended effects, whether any unintended consequences could arise from them and what would be the costs arising from implementing and enforcing them.
- How such remedies might be implemented, administered and enforced in practice, for example which organisations could best oversee introduction of a particular remedy and then monitor it. We are particularly keen to receive views on whether remedies could be effectively implemented through voluntary and self-regulatory measures, or whether they would require primary or secondary legislation to be effective.
- Whether the recipient of the recommendation (be it a government department, trade association, companies in the industry and so on) is likely to be willing to implement the recommendation and whether it could do so fully and effectively.
- How a package of remedies might work together. In some cases, these remedies might be alternatives. In other cases, these proposals may be complementary and would be intended to work together as a package to maximise their effectiveness.
- We are also interested in whether there are any other effective and proportionate remedy options available that we have not identified.

6.12 We would also welcome views on our intention not to pursue further the remedy options set out in paragraph 6.8 and Appendix A. Views on the aspects identified in paragraph 6.11 are also invited for these remedy options.

## **7. Next steps**

7.1 The CMA considers that, given the large number of interested parties and the wide-ranging issues in the sector, it is appropriate to provide an opportunity for interested parties to comment on its current views, and how any problems in the market might best be remedied.

7.2 In the light of responses, further meetings with stakeholders and any further evidence received or analysis conducted, the CMA will then develop its findings on the market, and will evaluate remedial options in order to reach recommendations which it considers to be the most effective and proportionate available to address the problems identified.

## **8. Details of how to respond**

8.1 The CMA would welcome written comments on its current views, and how any problems in the market might best be remedied.

8.2 Interested parties can submit their comments by email by 19 September 2014 to [propertymanagers.study@cma.gsi.gov.uk](mailto:propertymanagers.study@cma.gsi.gov.uk), or write to us at:

Residential Property Management Services Team  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London  
WC1B 4AD

8.3 The CMA would like to make interested parties aware that it may choose to disclose information that it obtains during the course of this market study, including as a result of this invitation to comment. It may also publish it in any document it produces at the end of the market study. In deciding whether to do so, the CMA 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 CMA 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').

8.4 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 CMA 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.

## **Other remedies identified**

1. We have considered various alternative recommendations that we are not currently minded to pursue but on which we would also welcome views. The reasoning for these provisional views is set out below.

### **Statutory regulation of property managers**

2. There was widespread support among the stakeholders we have spoken to during our information gathering to date for the statutory regulation of property managers. At present, property managers are not required to be members of any trade association, be subject to a code of conduct or to hold any form of professional property-management-related qualification. Regulation is seen by some, therefore, as a way of driving up standards in the market, especially among those providers that are not affiliated with one of the main trade associations.
3. However, we found limited and mainly anecdotal evidence to support the allegation that non-trade-association property managers are responsible for the majority of problems that occur in the RPMS market. In addition, recommending the introduction of new regulation could raise costs, limit entry and restrict competition and consumer choice. We have particular concerns that the cost of regulation may adversely impact smaller property managers, through the increased costs of compliance, and prevent innovative market entry or force some of the smaller, local property managers to exit the market. This would have the adverse effect of reducing the competitive constraint on fee levels and service quality in the RPMS market.
4. In the absence of compelling evidence to justify recommending its introduction, we are currently minded to pursue alternative solutions to regulation, as set out above. We have also had regard to the relevant provisions of the Enterprise and Regulatory Reform Act 2013 which will require, once the relevant provisions commence, that all property managers are members of an approved redress scheme. This should help to ensure that leaseholders can access effective redress, regardless of whether the property manager that they are dealing with is a member of one of the trade or professional associations that operate in the sector.

### **New unified code of conduct**

5. There are a number of relevant codes of conduct that property managers may comply with. While we understand that the ARMA and RICS codes cover a

good proportion of the market, including most of the large suppliers of RPMS, their coverage does not extend across all businesses that may be operating as a property manager. As such, we took the view that the prospects for designing a new unified code of conduct for the industry could not be achieved working through either of these bodies, either alone or working together. There may though be merit in aligning as far as practicable given their different coverage the various relevant codes of conduct and self-regulation schemes so as to provide clarity both to leaseholders and property managers on expected conduct.

### **Requirement for property managers to hold a relevant property management qualification**

6. Professional qualifications can help to raise standards of service and customer service in a market. In this context, the Institute of Residential Property Management qualification is well regarded within the sector and we recognise the benefits that properly-trained staff can bring. As with regulation, to make it mandatory for property managers to hold a qualification could raise barriers to entry. It is not clear that the benefits of making such training mandatory would outweigh potential associated costs.

### **Decent Homes Initiative**

7. Local authorities do not typically operate sinking/reserve funds. As such, leaseholders may be billed for work that may run into many thousands of pounds when major works are required to be carried out. However, we have heard of arrangements put in place by local authorities that would not typically be found in the private sector, such as allowing charges to be paid back over an extended period of time or for payment to be deferred until the sale of the property.
8. Leaseholders in local authority housing may face very large one-off bills for major works required because the housing development or property needs to be brought up to an appropriate standard.<sup>12</sup> DCLG has consulted on the possibility of a service charge cap<sup>13</sup> being introduced, but if enacted this will

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<sup>12</sup> The Government has set minimum standards for social housing. To help local councils with the worst housing, the Government provided £1.6 billion to the Decent Homes programme for the period 2011 to 2015. Similarly, in Wales, The Welsh Housing Quality Standard requires all social landlords to improve their housing stock to an acceptable level by 2020. Even if leaseholders' own flats are not upgraded, where blocks or estates are being upgraded, those leaseholders will be charged for their proportionate share of the work to communal structures and facilities.

<sup>13</sup> See the [consultation paper](#). The proposal is for a maximum service charge for local authority leaseholders. The consultation was on a proposal to update Mandatory Directions to councils to cover central government funding for repair, maintenance or improvement, including Decent Homes Grant from the 2013 Spending Review. In such cases, the proposal was to have a £10,000 cap on service charges for leaseholder works on homes outside London, and £15,000 on homes within London.

have only a limited impact on the majority of leaseholders as this will only cover circumstances in which the local authority receives a grant from government, as opposed to works undertaken by the local authority using its own funds.

9. It would be inequitable for leaseholders not to bear any of these costs or for the costs to be passed on to other taxpayers (through higher council tax charges). We recognise that there may be reasons to choose to offer leaseholders some protection against large and unexpected costs, but we do not consider that this would be about making the market work better. Transparency and making sure that leaseholders can plan for such expenses are areas we are particularly concerned with and which are addressed within our remedy proposals.
10. While we are aware that this is a concern, we have not examined whether there is any element of cross-subsidisation going on in such circumstances between leaseholders and tenants.

### **Prohibiting vertical integration/use of related companies**

11. There are concerns that the vertical integration of some property managers, or the use of related companies to provide services, could incentivise property managers to commission unnecessary works and/or charge higher prices than would be possible if the relevant contract had been subject to competitive tender.
12. Our view is that there can be strong efficiency arguments for vertical integration and the use of related companies but, given the difficulties that leaseholders can face in assessing value for money and influencing decisions taken on their behalf, there does exist the potential for conflicts of interest to arise. However, we consider that any concerns may best be mitigated through improved transparency and accountability of these relationships. Our proposed package of recommendations is intended to deliver this outcome.

### **Database of benchmark charges**

13. We considered whether it would be practicable to provide a database resource outlining typical costs/charges for a broad variety of services and major works which are commonly incurred in property maintenance, such as management charges, regular services like cleaning and insurance, and major maintenance and repair works. Such a database would provide a tool for leaseholders to determine whether proposed charges were excessive compared to market norms. In order to be useful, this database would need to be based on a wide variety of evidence and would need to be searchable in

order to provide relevant costs for different specifications of work on different types and ages of property and in different regions.

14. Our view is that the gathering of such a database would be a very large and expensive task. It is not clear who would do this and how the work would be funded, whether they could acquire the relevant information, and whether the type of work and its circumstances could be sufficiently well categorised so as to allow meaningful benchmarks to be identified. It may also serve to freeze market prices at existing levels rather than encouraging a more dynamic evolution or reduction of charges.

### **Private sector provision of RPMS to local authorities**

15. We understand that very few local authorities directly employ private sector property managers (although this is more common among housing associations). Instead RPMS is usually provided in-house or via an ALMO.<sup>14</sup> RPMS in this context can be different from private sector property management due to the mixed tenure of tenants as well as leaseholders. We considered whether further opening up of the provision of RPMS so that there was periodic competitive tendering would be appropriate in driving efficiency and service quality improvements.
16. We are not minded to make a recommendation at the moment on the basis of the evidence currently available. We understand that local authorities may already benchmark themselves against the private sector. We also recognise that there are likely to be many circumstances when market testing can deliver significant benefits either in bringing in private sector services or in holding in-house provision to account. However, we have not received clear evidence to establish that an existing lack of openness of the public sector to private sector provision is responsible for any problems experienced. It would of course remain for local authorities to determine whether opening up their provision of RPMS would be appropriate.
17. We would welcome further views and evidence on this possible approach that would help us establish whether a recommendation in this regard, possibly targeted at particular underperforming local authorities, would be helpful as a remedial measure.

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<sup>14</sup> Arm's Length Management Organisation – a company set up by a local authority to manage and improve the properties it owns.