

A British Property Federation response to:

Residential Property Management Services: An update paper on the market study

A written submission to the Competitions & Markets Authority (CMA)

1. The BPF welcomes the opportunity to respond to the CMA's update paper on the market study of residential property management services (RPMS).
2. The British Property Federation (BPF) is the voice of property in the UK, representing companies owning, managing and investing in property. This includes a broad range of businesses – commercial property owners, financial institutions and pension funds, corporate landlords, local private landlords – as well as all those professions that support the industry.
3. The BPF recognise the problems associated with the provision of RPMS as identified in the CMA report, and is supportive of statutory regulation that would mandate minimum standards in the sector. Our view is that the current lack of regulation is creating a two tier RPMS market – one that abides by best practice, and one that does not. Regulation is currently only enforced through voluntary membership organisations, such as the Association of Residential Managing Agents (ARMA) and the Royal Institution of Chartered Surveyors (RICS), and is therefore not universally enforceable.
4. This response will explain why there needs to be stronger legislative authority to enforce RPMS regulations before it is possible to address problems identified, and how they might be remedied. We will consider what we believe to be the underlying issues that are more specifically identified within the report, and give recommendations accordingly.
5. The BPF is concerned that attempts to improve RPMS provision will be ineffective unless there is statutory power to forcibly regulate the market. Currently, RPMS companies can agree to comply with a voluntary code of practice such as ARMA Q, but since there is no obligation to be a member, and nothing preventing someone setting themselves up as a managing agent, there are few options to control the quality of service. In the same way that all chartered surveyors are accountable to RICS, and all lawyers are accountable to the Law Society, there needs to be a universal regulator(s) for RPMS that acts as both an adjudicator

and educator. Such a body(ies) would be able to independently and individually assess cases of reported misconduct, and enforce penalties where appropriate. It would be a step in the right direction to introduce compulsory accreditation for property management services, supported by an independent framework for dealing with complaints. Until a robust level of enforcement exists in the industry, the problems outlined in the CMA document and other related poor practice will continue.

6. As well as firm-level regulation, the BPF also supports the efforts of organisations such as the Institute of Residential Property Management (IRPM) to improve training and the professional standards of individuals in the industry. Ensuring that at least some individuals in all firms in the sector have reached a minimum level of competence and are pursuing CPD would help maintain standards.
7. There will always be a few rogues in any sector, who are acting illegally, but where there is tension between leaseholders, freeholders, and the managing agent, it is often likely to be caused by a combination of a lack of transparency and/or a lack of knowledge of the complex issues associated with leaseholds.
8. The BPF consider that the perceived lack of transparency between leaseholders, freeholders and RPMS explains many of the problems identified in the report. The lack of control that leaseholders face, as well as misaligned incentives, are both issues that would be remedied by greater transparency as suggested by the report. We fully support efforts to increase transparency in the market.
9. Transparency, while essential to empowering leaseholders, will only go so far to improve the market. Education is crucial if leaseholders are to force a change in how the market operates. This starts with all parties having a full understanding of their rights and obligations. A common finding is that information is not sought until a problem arises, hence the Law Society should consider mandating standardisation of pre-assignment enquiries on leasehold properties and Government should ensure educational resources are made available at conveyancing, although this in itself presents challenges, as the lessees often seek the cheaper deals, missing out on better quality service. Compelling solicitors to provide information setting out the rights and responsibilities of a leaseholder and the

nature of leasehold would at least provide some guidance. The BPF would of course be happy to assist in the development of such a document.

10. Building insurance is a prime example of how a leaseholder can be exposed to malpractice. With the insurer and the freeholder having no responsibility to inform the leaseholder of how the cost of the premium was arrived at, or the percentage of the premium the freeholder could potentially receive, the circumstances are totally at odds with the interests of the leaseholder. This situation is not going to be resolved by a best practice requirement to divulge information on money made from premiums, but by the Financial Conduct Authority demanding greater disclosure.
11. The disclosure of costs and profits from the managing company and its affiliated companies would allow the consumer to make a fully informed and transparent decision and will also prevent price rigging. There must be provisions in these databases to distinguish between regional cost differences. Similarly, we recommend that there are sub-categories to account for different levels of service provision, which logically account for different costs between RPMS.
12. The BPF believes that organisations such as the Leasehold Advisory Service (LEASE) can be instrumental in improving the guidance available in this field, and making it available to prospective leaseholders as early as possible in the process. The mediation services they offer can alleviate conflicts before they escalate, by offering an independent and expert view on individual cases of perceived misconduct. Organisations of this type play an important role in supporting leaseholders by educating them about the pre existing rights and protections such as Consumer Protection legislation. The BPF is therefore disappointed that government funding of LEASE has decreased since 2010, and urges full support of this organisation.
13. The BPF supports the principle of RTMs and RMCs. Where they work well they give leaseholders the opportunity to move forward together on issues and authority to deal with agents and freeholders. They are not a panacea, however, and are dependent on a cohesive relationship existing amongst leaseholders, and like any neighbourhood, differences can arise within such groups that may nullify their practicality. The BPF has supported efforts to

reduce the voting thresholds for recognising tenants' associations, to a simple majority, so that recognition is easier to achieve.

14. As with many points raised in this response, it is worth questioning whether a regulatory response would not solve many of these issues in a more binary fashion. If there is a determination to avoid a regulatory response, efforts should be made to assist leaseholders through organisations like LEASE, providing impartial and professional adjudication where there is perceived bad practice by an agent.
15. The BPF welcomes that redress in the sector is being put on a statutory footing. Redress via an ombudsman, however, is a reactive process and relies on leaseholders knowing they have been treated badly and reacting accordingly. It is a helpful step, but will not by itself tackle some of the issues flagged up in the CMA report, which consumers are sometimes unaware of.
16. A significant barrier to greater clarity is the opaque and dispersed nature of the legislation that covers leasehold law, particularly for long leases. We would recommend that following this review of RPMS, the Law Commission gives serious consideration to condensing legislation affecting long-term leasehold law into one plain English Bill when it considers its next programme of law reform.
17. Relying on self-regulation alone in the RPMS market can only go so far to alleviate the problems outlined in this report. The complexities of leasehold provide greater scope for malpractice than in some markets and cannot be tackled solely via good practice initiatives. There is a need for a stronger regulatory disincentive for managing agents who act improperly. If the recommendations proposed in the market update are not to simply increase the gulf between good and bad agents, they need regulatory authority and proactive enforcement.

for further information and follow-up

We would be delighted to expand upon any aspect of this response and to provide further supporting information. Please contact in the first instance: Matthew O'Connell (Policy Officer), British Property Federation, 5th Floor, St Albans House, 57-59 Haymarket, London, SW1Y 4QX Tel: 0207 802 0126 Fax: 0207 834 3442 Email: moconnell@bpf.org.uk