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Response to: Strengthening Consumer Redress in the Housing Market

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## Consultation Response

### Strengthening Consumer Redress in the Housing Market

#### Executive Summary

- Which? strongly believes that a comprehensive review and reform of the redress schemes in the housing sector is needed. Current redress provisions are complex and confusing for consumers. There are also gaps in the areas covered and in the enforcement powers.
- Which? notes the recent publication of the Government's Consumer Green Paper: Modernising Consumer Markets which considers issues of consumer redress in both the housing sector and more broadly. We welcome the Government's efforts to ensure consumers can more easily get redress when things go wrong.
- Government should ensure that any redress provisions include the following features:
  - i. **Accessible for consumers** by ensuring there are not barriers to consumers seeking the redress they are entitled to.
  - ii. **Effective** by having adequate enforcement powers to hold providers to account when things go wrong and by having the necessary skills to deal with consumers' complaints effectively.
  - iii. **Transparent** through the regular publication of decision criteria, complaints data and outcomes of cases.
  - iv. **Independent** by providing an impartial service to both consumers and companies
  - v. **Accountable** to a competent authority. That authority should undertake periodic reviews on the effectiveness of Alternative Dispute Resolution (ADR) schemes and publish the results.
  - vi. **Promotes improvements** within the housing sector by using the information gathered to (a) identify sector wide issues and (b) encourage companies to act on complaints data.

- Which? believes it is imperative that there is a single point of access to ADR in the housing sector. This could be done by establishing a single housing ombudsman or establishing a single access front door. Whichever option is selected, the outcome must be that the experience for consumers in accessing and using the schemes is as smooth and easy to navigate as possible. As part of this it is essential that consumers have a clear single point of entry regardless of the area of the housing market their issue concerns and that the system includes the above features.
- Alongside reform to the operation of the redress framework Which? also supports expanding the availability of redress to buyers of new homes, tenants of private landlords, and leaseholders.
- Finally, Which? believes Government must consider how redress fits within the broader regulatory landscape of the housing sector and ensure that there is clarity about the role of redress compared to other possible routes for dealing with poor practice such as any statutory requirements on local authorities. Government should ensure roles and responsibilities are clear and avoid unnecessary overlaps which will only risk confusion for consumers.

## Chapter 2: How things work now

Which? agrees with the view of the consultation that the current landscape is confusing and overly complex with a lack of clarity for consumers on how they go about raising a complaint and who they can raise a complaint with. This lack of awareness can result in consumers not getting access to redress they are entitled to. Furthermore, gaps in the redress landscape not only compounds confusion but also means that, in some areas, consumers have no access to redress when things go wrong.

In addition to the issues which are already identified in the consultation, Which? is also concerned that where redress schemes are already established it is not always clear how these schemes are held to account and whether the reporting frameworks that are in place ensure these schemes are delivering a good service to consumers.

More broadly, redress should play a role beyond simply resolving individual complaints. There is an opportunity for those schemes to highlight recurrent issues with individual companies and broader systemic issues within the sector to inform improvements in the sector as a whole. This will not only require specific resources and processes to be in place but also a broader requirement to be reflected in any organisation's operational culture and performance indicators. As highlighted below Government should consider the findings and recommendations from the review of the Ombudsman Service: Energy, undertaken in 2015 which included the organisation's approach to promote sector improvements.<sup>1</sup>

## Chapter 3: Improving 'in house' complaints handling

It is essential that in-house complaints procedures are effective and efficient at resolving consumer problems and allowing issues to be resolved locally wherever possible. To enable

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<sup>1</sup> A Review of Ombudsman Service: Energy. A Report for Ofgem. Lucerna Partners. July 2015.

this, companies must ensure they clearly communicate their in-house complaints procedures to consumers and this must include details of how long they can expect it to take for issues to be resolved. Further, to help improve the levels of service that individual organisations are providing to consumers it is important that companies have processes in place to ensure they take learnings from the complaints that they are handling

Which? believes that provisions will need to be put in place to ensure that such practices are adopted across the sector. There is currently no clear single mechanism through which this could be done and Government should therefore consider what alternative options can be utilised to require adequate complaints procedures and take action where this is not in place.

The recent announcement to require managing and letting agents in the private rented and leasehold sectors to abide by a new mandatory code of practice offers a way to improve complaints handling for this part of the sector. In developing this code, Government should include requirements for agents to have effective in-house complaints procedures. Similarly for estate agents, Which? has previously advocated for Government to review the limited regulation and oversight of the estate agent market, including consideration of a requirement for estate agents to abide by a single code of practice. Such a code of practice should include requirements around the in-house complaints procedures.

A revised redress framework can also contribute to the improvement of in-house complaints handling. As outlined in more detail below reform of the current framework (whether through the establishment of a single ombudsman or revision to the existing provisions to provide a single point of entry) must include processes to identify issues with individual companies. This would include issues which suggest that a company's in-house complaints handling is inadequate resulting in problems being referred to the ombudsman (or redress schemes) when they should have been dealt with through internal complaints handling. The framework must also allow for recommendations to be made for improving a firm's procedures or highlighting non-compliance with a prescribed code of practice.

## **Chapter 4: Practices and Powers**

Which? is supportive of a thorough review of the powers and practices of redress schemes operating in the housing sector. The consultation identified a number of important areas for consideration and we have provided further detail on these below as well as identifying a number of other important practices we believe should be applied.

### **i. Accessible for consumers**

- Consumers should have a clear, single point of access to ensure that the process of accessing redress is as smooth and simple as possible, avoiding unnecessary complexity and removing confusion.
- Any redress scheme should be free (or very low cost) to use.
- Schemes must be well promoted including by those organisations with direct access to housing market consumers (estate and letting agents, mortgage lenders, new build developers etc) with clear information about the scheme and how to access it.
- It must be easy for consumers to submit a case and schemes should ensure that the consumer journey is smooth with high quality communications throughout.

- Any scheme must put processes in place to ensure that cases are resolved as quickly as possible and that the process for the consumer is smooth with frequent communication to consumers to update on progress.
- Redress schemes should not impose unreasonable time limits for having a case referred to them and should consider extensions to any limits in certain circumstances. Any requirement for a complaint to be submitted to redress within a certain time-scale should be clearly signposted to consumers as part of the a company's in-house complaints process.

## ii. **Effective**

- It is essential that any redress schemes has adequate powers to enforce their decisions and these must be binding on firms so that consumers have confidence that they will receive redress when they are entitled to it.
- The sanctions, including compensation levels, that are available to a redress scheme will need to reflect the level of harm caused to the consumer; a range of options will therefore need to be available.
- Schemes need to have the necessary skills to deal with consumers' complaints effectively.

## iii. **Transparent**

- All schemes must ensure that the decisions they take are transparent. This requires explanation of decisions to be clearly and regularly communicated.
- There must be clarity around the appeal processes that are in place if there is disagreement with a scheme's decision.
- There must be regular publication of decision criteria, complaints data and outcomes of cases.

## iv. **Independent**

- Schemes must be impartial in resolving complaints, providing both consumers and companies with confidence that they will be treated fairly.

## v. **Accountable**

- Any redress provision must have clear and transparent accountability to a body who can have oversight of redress for the housing sector. It may be suitable for this role to be undertaken by the Ministry of Housing, Communities and Local Government (MHCLG) (who already perform this role for some redress schemes in the sector) or another similar competent authority; Government will need to assess which body may be most suitable to fulfill this role.
- Government must ensure that redress schemes are subject to effective incentives to ensure they are best serving the needs of consumers. This should include meaningful and measurable performance standards which schemes must be required to report on on a regular basis.
- Accountability measures and schemes performance against these measures should be made publically available, along with action plans to address any issues of inadequate performance.
- The accountability framework should ensure that if the scheme(s) is (are) not delivering the desired policy outcomes or is/are not performing sufficiently well in consumers' interests, steps can be taken to address this and the scheme must

comply with those steps, this could include removal of the schemes approval to carry out redress services in the housing sector.

- A process of independent reviews of schemes performance should be put in place to ensure redress is delivering a good service to consumers.

#### vi. Promotes sector improvements

- Redress should have a role which extends beyond simply resolving individual complaints but further helping identify broader systemic wide issues in the sector and supporting and promoting best practice in complaint handling.
- In considering this, Government should review the lessons learnt and recommended actions in other sectors. For example, in 2015 Ofgem's commissioned an independent review of Ombudsman Services.<sup>2</sup> One of the recommendations of that review was that schemes must ensure that adequate skills are in place to effectively carry out this broader role. The capabilities necessary for the core role of complaint handling and the skills and capabilities for inputting to sector improvement are different and adequate planning is required to ensure the required resources are in place.
- Data on decisions, areas of complaints and the type of complaints rejected by the schemes should be shared across the sector, relevant regulators and MHCLG to allow action to be taken where it is appropriate.
- An annual report summarising the assessment of these areas and the steps being taken to address any identified issues should be published.

## Chapter 5: Addressing the gaps

### Buyers of new build homes

Which? agrees that access to redress when things go wrong with new-build properties can be particularly problematic. In particular, there are weaknesses with the warranty and associated redress schemes that mean consumers can find it difficult to have problems rectified.

Consumers have different routes to redress depending on whether or not their warranty scheme is covered by a consumer code. Where a redress scheme associated with a consumer code is in operation they can be expensive to access and there is a lack of easily available information about available redress options and further a lack of clarity regarding the decision criteria of these schemes.

Which? believes that the redress provisions available to buyers of new homes need to be reformed to bring it in line with the practices we have set out in response to Chapter 4. Furthermore, the process for seeking redress should be streamlined so that consumers have a clear single point of access when they face issues.

### Tenants of Private Landlords

Which? supports the requirement for private landlords to be part of some form of redress as this is currently an area where consumers feel disempowered in resolving complaints. In a recent survey undertaken by Which? of tenants in the private rental sector, 21% of those surveyed had experienced a recent problem which they felt they wanted to make a complaint about, however of those 55% have not gone on to make a complaint. Survey participants

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<sup>2</sup> A Review of Ombudsman Service: Energy. A Report for Ofgem. Lucerna Partners. July 2015.

stated that not wanting to cause problems for themselves and avoid repercussions with the landlord was the main reason for not complaining when there was an issue, followed by a view that complaining would not solve anything. When asked whether they would support or oppose the idea of an independent body to help renters resolve problems, 82% of participants were supportive of this.

However, detailed consideration is required of how the system would work in practice, including how it will be funded and operated to ensure consumers are adequately protected without over-burdening good landlords.

As the consultation recognises, good communication of the new requirements will be essential. Work will need to be undertaken by Government and organisations who are likely to be in direct contact with landlords and tenants (letting/management agents, mortgage lenders, insurance providers, etc) to ensure that landlords are made aware of their obligations to be part of a redress scheme and for tenants to be more aware of the options available to them when things go wrong.

The consultation proposes enforcement could be undertaken by Local Authorities. We agree that a clear and effective enforcement regime is essential to having an effective consumer redress in the housing sector. As such we would caution that the Local Authority will only be effective in doing this if they are provided with adequate resources. According to a report by the National Audit Office on the 'Financial sustainability of local authorities 2018' spending on housing services by local authorities has fallen by 45.6% from 2010/11 to 2016/17<sup>3</sup>. In this vein Government must caution against the introduction of 'symbolic' legislation which is not effectively enforced because of lack of resources.

Finally Government needs to consider the role that a redress scheme will play within the context of the regulatory landscape of the private rental sector as a whole. There are *some* routes already in existence for consumers, for example significant issues relating to property standards may be dealt with through the Local Authority and in addition some landlords are required to obtain a license before they are able to let out their property. Which? has a number of separate concerns regarding some of these interventions, not least consumers ability to access redress through the Local Authority and issues particularly regarding enforcement. However, more fundamentally, in introducing any new measures, Government needs to consider in detail how a new redress scheme will work as part of the overall landscape to ensure an effective redress framework is in place that ensures consumer problems are resolved fairly and efficiently.

### Leaseholders

Which? supports introducing more robust protection for leaseholders. While the government's 21 December 2017 response to the consultation on 'Tackling unfair practices in the leasehold market' is welcomed, this does little to address the difficulties faced by current leaseholders in accessing redress for the following reasons:

- The promise to make routes of redress clear for these individuals does not make redress more likely, since the cost (and costs risk) associated with litigation are the primary deterrent. A dedicated ADR scheme would certainly help to address this.

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<sup>3</sup> <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>

- The promise to make it easier, in conjunction with the Law Commission, for existing leaseholders to buy out their freeholds does not help those whose freeholds have already been sold on (often to pension funds) without a right of first refusal. If a pension fund, for example, is to be encouraged to sell a freehold to the leasehold owner, it will likely need to be reimbursed at market value, as the trustees will have duties to act in the best interests of the fund.
- Anecdotally we are told that leaseholders often feel unable to pursue the main developer 'offender' given their aggressive litigation approach and lack of professional regulation. Professional negligence claims against solicitors typically lead to quicker settlement outcomes.
- Many leaseholders will now be "out of time" from a (typically, six year) limitation perspective.

Whilst addressing all the issues outlined above may require additional interventions, Which? supports introducing a requirement for all freeholders of leasehold properties to be required to sign up to a redress scheme.

## **Chapter 6: Creating a single housing ombudsman service**

Which? has highlighted in our response above a number of key features and practices that should be put in place in order to reform the provision of redress in the housing sector. One requirement that we consider fundamental to improve the experience of consumers in seeking redress is to ensure that the process for doing so is greatly simplified.

As such Which? supports Government ensuring that consumers have a single point of access to seeking redress and believe this could be achieved either through the establishment of a single housing ombudsman or a single access portal with reform and standardisation of the practices of the schemes sitting behind this. Whichever option is selected, the outcome must be that the experience for consumers in accessing and using the schemes is as smooth and easy to navigate as possible. As part of this it is essential that consumers have a clear single point of entry regardless of the area of the housing market their issue concerns.

We recognise that there are benefits and challenges to both options, not least the timescales for implementation particularly where Primary Legislation may be required. At this stage we do not have enough information from the consultation as to how either approach will be implemented or work in practice to determine which may be the most appropriate solution. Government should consider the requirements outlined in our response to Chapter 4 and review which approach can best deliver these essential requirements to provide consumers with an effective redress framework that not only resolve individual complaints but also contributes to ongoing improvements in the sector.

## **About Which?**

Which? is the largest consumer organisation in the UK with more than 1.7 million members and supporters. We operate as an independent, a-political, social enterprise working for all

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