



Protecting consumers in the letting and managing agent market – A call for evidence from The Department for Communities and Local Government

**A response by
The Chartered Institute of Legal Executives**

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. This includes more than 5,000 members of all grades who work in conveyancing.

- 1.2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.

- 1.3. This response includes contributions from some of CILEx's members working in conveyancing. CILEx liaised with practitioners through its Conveyancing Specialist Reference Group, and conducted a survey of members into their experience with letting and managing agents, the power tenants and leaseholders have in the letting and leasehold sectors, and the possible impact reform could have on protecting consumers in the letting and managing agents market. These are expanded in more detail below.

Chapter 1 – The Case for Change

2. Question 1.1: Do you agree with analysis of the problems in the market set out in this chapter?

2.1. Almost all respondents agreed or strongly agreed with The Department for Communities and Local Government's (DCLG) analysis of the problems in the market set out in Chapter 1 of the call for evidence.

2.1.1. Respondents unanimously agreed or strongly agreed that since an agent is appointed by the landlord, "tenants have very limited ability to negotiate or challenge the type and quality of agent services."¹

2.1.2. A majority of respondents² also agreed or strongly agreed with DCLG's analysis that, "it can be very difficult for those paying for services to assess whether they are receiving value for money,"³ and that "even where consumers are really unhappy with the service of their agent it can be difficult, in some cases impossible, to switch."⁴

2.1.2.1. Additional comments provided to CILEx by respondents emphasised concerns over a lack of regulation and accountability when leaseholders and tenants intend to challenge poor services. These issues are seemingly exacerbated, according to some respondents, by the close relationships seen between landlords and managing agents.⁵

2.1.3. A majority of respondents agreed or strongly agreed with DCLG's analysis of the attempts to correct imbalances of power⁶, which

¹ Paragraph 29 of The Department for Communities and Local Government's Call for Evidence

² 87% of respondents agreed or strongly agreed that "it can be very difficult for those paying for services to assess whether they are receiving value for money."

93% of respondents agreed or strongly agreed that "even where consumers are really unhappy with the service of their agent it can be difficult, in some cases impossible, to switch."

³ Paragraph 30 of The Department for Communities and Local Government's Call for Evidence

⁴ Paragraph 31 of The Department for Communities and Local Government's Call for Evidence

⁵ One respondent commented: "those paying for services can clearly see that they are not receiving value for money but can do nothing about it, other than complain to the landlord - who may well have an interest in the agent."

⁶ 87% of respondents agreed or strongly agreed that "the Right to Manage allows leaseholder to take control of management but not all leaseholders are eligible, and it can be difficult to achieve the necessary consent – particularly where leaseholders are not resident."

100% of respondents agreed or strongly agreed that "redress can also be lacking, and that the tribunal system can be an expensive, uncertain, and intimidating process for leaseholders and tenants."

concluded that Right to Manage and redress have been inconsistent and lacking.

2.1.3.1. Respondents commented that the process of redress can often be complicated and time-consuming, and can prove daunting and inaccessible without legal representation. As a result, many individuals are put off from challenging managing agent fees.⁷

What regulatory measures could better empower leaseholders to manage the quality and cost of the services they receive?

- 2.2. Although respondents indicated a number of measures that DCLG could consider,⁸ a significant proportion of members indicated that a new regulatory approach is needed to better empower leaseholders to manage the quality and cost of the services they receive.⁹
- 2.3. Respondents emphasised that DCLG should consider introducing minimum entry requirements for letting and managing agents,¹⁰ and a codes of practice¹¹ as opposed to seeking to introduce further measures to the regulatory structure that currently exists.
- 2.4. An alternative may be to look afresh at the Commonhold & Leasehold Reform Act 2002 in relation to this issue. Legislation could specify the requirement for reasonable fees to be charged and that administrative support delivered in an efficient and timely manner.
- 2.5. CILEx would welcome DCLG to pursue introducing a new regulatory structure, as opposed to continuing with the current regulatory approach with

⁷ One member provided a commentary of their own personal experience: "I owned a leasehold property had a demand for a payment that they couldn't charge me-it was a self-repairing lease. I tried to query it and ended up paying not only the initial payment but also their solicitors fees as even their solicitor wouldn't answer my questions and just said I had to pay or they would take me to court and I work in the industry and understand the terms of the Lease. With them having solicitors backing them up I just didn't feel I could fight them as it would end up costing me a fortune for a £70 fee. I'm sure a lay person would just pay what they were told even though the Landlord wasn't entitled to it."

⁸ One respondent said: "ongoing training requirements would be a good starting point." Another respondent said: "Creation of a statutory notice process whereby a tenant can identify on the notice what is not meeting the required quality."

⁹ See paragraph 3.1 – 3.2

¹⁰ See paragraphs 6.1 – 6.9.1

¹¹ See paragraph 10.1 – 10.2

additional measures, in order to better protect consumers in the letting and managing agent market.

3. Question 1.2: Is a new regulatory approach required for property management agents? If not, why not?

3.1. A larger proportion of respondents (100%) agreed or strongly agreed that a new regulatory approach is required for property managing agents, when compared to those that agreed or strongly agreed that a new regulatory approach is needed for property letting agents (80%). The difference in levels of agreement was influenced by respondents preferring not to answer as a result of lack of relevant experience.¹²

3.1.1. Respondents emphasised a regulatory approach for property agents could prove effective in tackling the issues faced by consumers in the letting and property agent market.¹³ Furthermore, respondents highlighted that clear and concise regulations and standards would provide agents with a greater understanding of their role and responsibilities.¹⁴

3.2. The impact property agents can have on consumers in a significant proportion of cases is highlighted by our members throughout our survey. In addition to the analysis provided by DCLG, and as a result of our respondents' opinions and experience, CILEx agrees that a new regulatory approach is required for property management agents in order to ensure that consumers are protected when renting or leasing a property.

4. Question 1.3: Aside from regulation, are there any alternative means the Government should consider for driving up standards and professionalism in the sector?

¹² One respondent said: "I don't have any real dealings with letting agents so I can't comment on them."

¹³ One respondent commented that regulation would mean property agents "are accountable and not a 'law unto themselves'."

Another respondent commented: "It would be much fairer for consumers and will make it an easier process for property lawyers."

¹⁴ One respondent commented: "If there are regulation and clear requirements and standards, everyone knows where they stand – including the agents themselves."

Another respondent commented: "Managing agents need to be aware of the state of the assets/estate they manage, and letting agents need to have proper inventories and have a transparent fee arrangement and photographic schedules for both parties."

4.1. Respondents did not indicate any alternative means the Government should consider for driving up standards and professionalism in the sector.

5. Question 1.4: What should be the scope and objectives of any regulation? In particular: i. Which agents and individuals working within managing agents should be covered? Should individuals, companies and officers be treated differently? ii. What types of services should be included? And should any types of companies or services be excluded? iii. Should any other classes of people or property professionals be covered by any regulator?

5.1. A majority of respondents agreed or strongly agreed that managing agents and letting agents should be covered if new regulations were introduced,¹⁵ providing additional comments that reflected those provided in 3.1 and 3.1.1.¹⁶

5.2. Of the 13% of respondents that disagreed that landlords should be covered if new regulations were introduced, one respondent emphasised concerns over the potential impact that blanket regulation may have of increasing rents as a result of increasing costs faced by “good,” legitimate landlords.

5.2.1. Drawing on their experience with selective licensing schemes, a respondent commented that they “often prove to be a burden for “good,” landlords who come forward to be registered and do nothing to penalise, or even trace, bad landlords who do not come forward.” The very nature of a selective licensing scheme means that “bad” landlords are unlikely to register in order to avoid being penalised.

5.2.2. Although it is reasonable to assume that a mandatory licensing scheme could suitably tackle this issue, concerns were raised that if blanket regulation were to include a mandatory scheme, it could unfairly impact consumers who may face increased rents as a result of the additional costs of licensing faced by both “good” and “bad” landlords.

¹⁵ 100% of respondents agreed or strongly agreed that managing agents should be covered if new regulations are introduced.

87% of respondents agreed or strongly agreed that letting agents should be covered if new regulations are introduced.

¹⁶ One respondent commented: “I think if there was more regulation and the individuals dealing with tenants understood how leases worked it could solve a lot of the problems. Each managing agent seems to have a standard way to deal with things irrespective of what the different leases say, rather than having a different procedure for each Lease i.e. a whole block should have leases in the same form, but properties in different parts of the country/town may not.”

- 5.3. Although large proportions of CILEx respondents agreed or strongly agreed that managing agents, letting agents and landlords should be covered by regulations if introduced by DCLG, respondents were more hesitant when asked if all staff working within managing agent firms and letting agents firms should be individually covered.
- 5.3.1. In addition to the 67% of respondents that agreed or strongly agreed that all staff working within managing agent firms should be covered if new regulations were introduced, 60% also agreed or strongly agreed that all staff working within letting agent firms should be covered too. Of remaining respondents, 27% neither agreed nor disagreed that all staff working within both managing agents and letting agents should be covered.
- 5.3.2. Respondents that disagreed that all staff working within managing or letting agents' firms should be covered if new regulations are introduced, commented that regulating staff members such as receptionists and trainees may be inappropriate since they are not the individuals giving professional advice.
- 5.3.2.1. By regulating all individuals within a managing or letting agent firm, the regulations could risk placing an unintentional financial burden on consumers who may face higher prices from managing or letting agent firms that increase prices as a result of increased costs associated with additional regulation.
- 5.4. CILEx proposes that all services provided during the course of managing a development, and letting or leasing a property should be covered by new regulations, if introduced. This would likely ensure that managing agents, letting agents and landlords would be covered. CILEx would also welcome further consultation on the extent to which the proposed regulations could reflect those currently in place for law firms and legal services in England and Wales. A similar regulatory approach may help to ensure that individuals working within a letting or managing agent firm who handle client money or charge for a service related to property letting or leasing are covered by regulations. We would also welcome additional consultation on the possibility

of over-regulation or “double regulation” in cases where a firm or service is already deemed to be suitably regulated by an alternative authority.

Chapter 2 – Entry Requirements

6. Question 2.1: Is there a need for minimum entry requirements for managing agents, similarly to the commitment to introduce such requirements for letting agents?

- 6.1. CILEx agrees that there should be minimum entry requirements for managing and letting agents in the leasehold and letting market. Respondents indicated that they agreed or strongly agreed with the introduction of minimum entry requirements for both managing agents and letting agents,¹⁷ commenting that a minimum entry requirement would likely establish and encourage higher standards for property agents and the services they offer.¹⁸
- 6.2. Despite the possible risks¹⁹, CILEx hopes that DCLG continues to consider introducing minimum entry requirements for managing and letting agents, and we would welcome further consultation on the ways in which these risks can best be mitigated.

Are there any risks, for example that this might stifle innovation?

- 6.3. Of respondents who provided comments in regards to potential risks resulting from the introduction of a minimum entry requirement for managing and/or letting agents, two-thirds indicated that they believed there were no associated risks.²⁰ A number of respondents also commented that although

¹⁷ 100% of respondents agreed or strongly agreed that there should be minimum entry requirements for managing agents

93% of respondents agreed or strongly agreed that there should be minimum entry requirements for letting agents

¹⁸ One respondent said: “We have qualifications to pass as property lawyers, so these types of professionals should also have a standard which they need to study and pass.”

Another respondent said: “To provide a better service, which is regulated, so that customers are not subject to such high fees.”

Another respondent said: “These parties provide services to parties who are vulnerable from a bargaining perspective and regulated compliance is the only way to ensure the appropriate standards are maintained.”

¹⁹ See paragraph 6.3 - 6.4

²⁰ One respondent said: “I don’t think there are risks. It is a positive requirement.”

Another respondent said: “Regulation of lawyer does not stifle innovation and neither should it here.”

there may be some risks, this should not prevent or obstruct attempts to protect consumers in the letting and managing agent market by introducing minimum entry requirements.²¹

- 6.4. In addition to concerns that the introduction of a minimum entry requirement could risk driving agents out of the market, therefore providing less choice for consumers in the future,²² a number of respondents commented that there are potential risks associated with costs for consumers that may result from the introduction of a minimum entry requirement for managing and/or letting agents.²³

If so, what should these requirements include – a fit and proper person test and/ or qualifications or training?

- 6.5. A marginally larger proportion of respondents agreed or strongly agreed that if minimum entry requirements were established, that new managing or letting agents should have to pass a fit and proper person test (87%) when compared to those that agreed or strongly agreed that they should have to complete a qualification (73%).

6.5.1. Our respondents did not, however, indicate that either option is mutually exclusive, and can therefore be used together, i.e. an individual could be required to complete a qualification and comply with a fit and proper person test.

6.5.2. CILEx provisionally proposes that a fit and proper test and qualification or training be introduced; however, we would welcome further consultation on the content and practicalities of how this test would work in practice.

- 6.6. All respondents agreed or strongly agreed that minimum requirements should include the requirement to comply with a codes of practice and with all relevant legal requirements. 93% of respondents also agreed or strongly agreed that property agents should be required to: complete relevant training,

²¹ One respondent said: “The risks should not be allowed to stop the opportunity of regulating this sector. If they consider themselves to be professionals they should be made to act like them.” Another respondent said: “Any risk is mitigated by the benefits.”

²² One respondent said: “It would drive agents out of the business.”

²³ One respondent said: “Costs could be passed on to the tenants.”

- become a member of a client money protection scheme, have professional indemnity insurance, and be regulated via an independent panel of experts.
- 6.7. 87% of respondents agreed or strongly agreed that minimum requirements should include an obligation to hold a professional qualification which would dictate the role an individual may have in a firm (i.e. a higher-level qualification would allow an individual to apply for promotions to roles 'higher-up' in a firm or organisation). Furthermore, 73% of respondents agreed or strongly agreed that the minimum entry requirements should include a requirement for a letting or managing agents to operate for a minimum period of time.
- 6.8. CILEx provisionally proposes that if minimum entry requirements are introduced in the letting and management agent market, those covered by the minimum entry requirements could be required to: comply with a codes of practice, comply with all relevant legal requirements, complete relevant training, become a member of a client money protection scheme, have professional indemnity insurance, and be regulated via an independent panel of experts. We also would provisionally recommend that individuals could be required to: hold a professional qualification which would dictate the role an individual may have in a firm, and operate for a minimum period of time.
- 6.9. CILEx would welcome further consultation on the extent to which minimum entry requirements should depend upon the role of the individual. For example, a trainee managing agent cannot be expected to meet the same requirements as a senior managing agent or director, especially if a requirement of operating for a minimum period of time is included.
- 6.9.1. Respondents were notably reticent when asked if property agents and other individuals should be required to join a register of private companies, local authorities and housing associations, with 40% of respondents indicating that they neither agreed nor disagreed with the proposed requirement. Respondents commented that it may be more appropriate to establish a new register of managing agents and letting agents as opposed to adding individuals to currently existing

registers.²⁴ As a result, CILEx would welcome further consultation on whether the requirement to join a register of private companies, local authorities and housing associations should be included in the minimum entry requirements in the letting and managing agent market.

7. Question 2.2: If qualifications or training are required, what should they cover?

- 7.1. A large proportion of respondents indicated that, if qualifications or training are required, they should cover all aspects of the work which is undertaken by managing and letting agents respectively. This would likely include providing prospective agents with an understanding of; the law associated with rented or leasehold property management, landlord and tenant law, and finance and accounting related to management and letting agency work.
- 7.2. CILEx would welcome further consultation on what the qualifications or training should cover: however, we would provisionally recommend that if introduced, a minimum entry requirement qualification or training should provide individuals with a thorough understanding of all aspects of the role they are likely to encounter and undertake, and should therefore include aspects related to client management in addition to the examples provided above (7.1).

What qualifications or courses already exist and are they necessary and sufficient?

- 7.3. DCLG may wish to consider existing qualifications and courses provided by organisation working in this sector, including The Royal Institute of Chartered Surveyors (RICS), The National Association of Estate Agents (NAEA), and CILEx.
 - 7.3.1. CILEx offers Level 3 and Level 6 units including; Contract Law, Land Law, Conveyancing Practice, Residential & Commercial Leasehold Conveyancing, and Client Care Skills that could be relevant for prospective managing and letting agents.²⁵

²⁴ One respondent said: "I would have expected regulation to include registers of managing agents (and letting agents) rather than adding them to some other register."

²⁵ CILEx qualifications are delivered on the job and can be undertaken by distance learning.

7.3.2. Additionally, CILEx works in collaboration with other organisations to endorse training and development programmes. This may prove an alternative approach if there exists relevant training programmes that would benefit from endorsement from an Ofqual regulated awarding organisation.²⁶

8. Question 2.3: Should any qualifications and training requirements differ depending on role and service offered? (E.g. different requirements for company officers, or differing requirements for repairs compared to contract negotiations?)

8.1. 60% of respondents agreed or strongly agreed that any qualifications and training requirements should differ depending on role and service offered, commenting that this structure would ensure that any training is relevant to the job the person is doing.²⁷

8.2. Of the 20% of members that disagreed or strongly disagreed, a number of varying concerns were raised:

8.2.1. One concern raised by respondents was the complicated structure a role specific qualification and training scheme may establish. While there are benefits to this type of qualification structure, it was highlighted that it could lead to unnecessary bureaucracy or disputes.

8.2.2. An additional concern raised by respondents emphasised whether it is safe, or in the consumer interest, to have property agents train or qualify in repairs such as those carried out by electricians or plumbers.

8.2.2.1. CILEx is concerned that a condensed or smaller qualification in repairs under the proposed minimum entry requirements, including plumbing and electrical repairs, could lead to property agents attempting to repair issues with a property without suitable, industry-standard, qualifications. This would

More information on the qualifications we offer and the property related Level 3 Units can be found here: https://www.cilex.org.uk/study/lawyer_qualifications/level_3_qualifications/level_3_units

²⁶ More information on CILEx's endorsed training programmes is available here:

https://www.cilex.org.uk/employers/support_for_learning_and_development/customised_and_endorsed_training_programmes

²⁷ One respondent said: "I think that any training must be relevant to the job the person is doing otherwise it is pointless as they won't remember the bits relevant to them if its buried in lots of other information."

Another respondent said: "The roles and skills required are different."

likely cause additional issues for leaseholder and those renting properties as a result of poor workmanship or inadequate repairs leading to further damages. CILEx would therefore advise against repair qualifications being included as part of the training and qualifications required of property agents.

- 8.3. As a result of the above considerations and evidence, CILEx recommends that if minimum entry requirements are introduced, any qualifications and training requirements should be appropriately matched to the relevant role and service offered.

9. Question 2.4: What are the core elements that should be covered in setting appropriate standards for letting agents and for property managing agents?

- 9.1. Respondents indicated that core elements that should be covered in setting appropriate standards for letting agents and for property managing agents should include: ethics and conduct, taking instruction, general operating standards, finance, marketing and advertising, repairs, communications, and disputes and complaints.²⁸

9.1.1. Additional core elements that DCLG may wish to consider include setting standards for: providing clear and concise costing in communications, and providing relevant information to clients at a reasonable price when enquiries regarding costs are made to a property agent.

10. Question 2.5: Do Codes of Practice have a role in any future regulatory approach?

- 10.1. All of CILEx's respondents strongly agreed or agreed that codes of practice should be applied as part of a regulatory approach to tackling issues associated with the letting and property managing market. Respondents emphasised that a code of practice could promote confidence among consumers, and would provide those covered by the codes with clear and

²⁸ Respondents were strongly in favour of establishing standards for the examples provided by DCLG in the Call for Evidence (paragraph 49)

concise guidance on how best to conduct work as a letting agent or property managing agent.

- 10.2. CILEx believes that codes of practice have a role in any future regulatory approach for letting and property managing agents.

11. Question 2.6: Could Codes of Practice (or any other reforms) have a role in addressing service charge abuses?

- 11.1. 82% of respondents agreed or strongly agreed that codes of practice could sufficiently address service charge abuses. Respondents indicated that if cases of abuse arose, the case and evidence of charges could be tested against the codes of practice, providing that the codes clearly clarify the extent to which service charges can be applied and for what reasons.
- 11.2. CILEx would welcome further consultation on the wording of future codes of practice in order to address service charge abuses.

Could and should they be used to tackle conflicts of interest which might arise, perhaps from connected companies?

- 11.3. 83% of respondents agreed or strongly agreed that codes of practice could be used to tackle conflicts of interest that might arise from connected companies in the letting and managing agent market. Respondents commented that codes of practice could help focus parties involved into ensuring that fairness prevails and the consumer is protected.
- 11.4. CILEx would welcome further consultation on the wording of future codes of practice in order to tackle conflicts of interest.

12. Question 2.7: How should a future system build on the existing codes? What elements of existing codes would be useful to retain? Are there elements that could go further?

- 12.1. A majority of respondents agreed that the general areas that codes of practice cover provided in DCLG's call for evidence provide a suitable system on which to establish and build a codes of practice for managing and letting agents.²⁹

²⁹ Paragraph 49 of the Call for Evidence.

12.2. CILEx would welcome further consultation on the wording of future codes of practice.

Chapter 3 – Approaches to enforcement and regulation

13. Question 3.1: Which of the following options do you believe would have the greatest impact in driving up standards and increasing consumer confidence in the sector:

- a. Requiring all letting agents and managing agents to be members of a relevant professional body. This would require professional bodies or organisations to be approved by Government, possibly operating to one Code of Conduct.**
- b. As above, but with oversight from a regulatory body, established or approved by Government.**
- c. Government establishing or approving a new regulatory body, which agents are required to sign up to, with membership of a professional body optional?**

13.1. A larger proportion of members agreed or strongly agreed that requiring all letting agents and managing agents to be members of a relevant professional body with oversight from a regulatory body, established or approved by Government (option 'b') would have a greater impact in driving up standards and increasing consumer confidence in the sector when compared to those that agreed or strongly agreed that options 'a' or 'c' would be more effective:³⁰

13.1.1. Respondents indicated that they agreed strongly with the reasoning provided by DCLG that emphasised that; although options 'a' and 'b' build upon existing structures and practices, reducing the cost

³⁰ 100% of respondents agreed or strongly agreed that, "requiring professional membership and an overarching regulatory body," would effectively drive up standards and increase consumer confidence in the sector.

80% of respondent agreed or strongly agreed that, "requiring professional membership" would effectively drive up standards and increase consumer confidence in the sector.

60% agreed or strongly agreed that, "an overarching regulatory body, with optional professional membership," would effectively drive up standards and increase consumer confidence in the sector.

Furthermore, when asked to rank the three options in order of how effective they would be in driving up standards and increasing consumer confidence in the sector, 70% of respondents indicated option 'b' would be most effective.

and time of implementation, there is a risk that consumer confidence is undermined where conflicts of interest arise and the independence of the regulator is called into question. Despite this however, respondents also indicated that a single overarching regulatory body would help provide greater consistency in approach and greater clarity for consumers.

- 13.2. Although all three options would likely improve standards and increase consumer confidence, CILEx is inclined to agree that requiring all letting agents and managing agents to be members of a relevant professional body, combined with oversight from a regulatory body, established or approved by Government, would be most effective.

14. Question 3.2: What implementation issues would need to be considered e.g. cost, corporate governance requirements, timescales for introduction?

- 14.1. Respondents expressed concerns in relation to the financial impact of implementing a regulatory approach in the letting and managing agent market. In particular, there was a concern that a financial impact will largely affect consumers as a result of the increased costs letting and managing agents are likely to face when implementing new regulatory requirements.
- 14.1.1. Increased costs would include those associated with training, qualifications, becoming members of professional or regulatory bodies, and implementing new business practices. It is reasonable to assume that as a result of these increased costs, property and letting agents may increase costs of services provided to consumers in the market including those renting or leasing a property.
- 14.2. Respondents also emphasised that timescales should be considered by the DCLG and any future regulatory authority. In the case, for example, that minimum entry requirements were introduced, the DCLG may wish to consider a staggered implementation scheme that would provide sufficient opportunity for managing and letting agents to qualify and/or transition under new regulations.
- 14.2.1. DCLG should also consider sufficient communication activity to notify all managing and letting agents, and other individuals covered by the new regulatory structure. A lack of publicity may result in individuals

unfairly facing sanctions or fines, or other undesirable market disruption.

- 14.3. Despite these concerns, CILEx emphasises the need for regulation and would therefore welcome further consideration on how the Government can best mitigate the risks associated with costs and timescales.

15. Question 3.3: Are there other regulatory models that the Government should be exploring? Please give details.

- 15.1. Respondents did not indicate any other regulatory models that the Government should explore.

16. Question 3.4: What powers would any new regulatory body require to enforce its standards?

17. Question 3.5: How could the requirement to be a member of an approved or regulatory body be effectively enforced?

- 17.1. Respondents indicated a number of powers that any new regulatory body may require in order to effectively enforce both its standards and the requirement to be a member of an approved or regulatory body.
- 17.2. The majority of respondents emphasised that the use of inspections, fines and sanctions could prove effective in enforcing the requirement of letting and managing agents to be a member of an approved or regulatory body, citing that this power could effectively protect the consumer and curtail unscrupulous activity.
- 17.3. A significant proportion of respondents also indicated that any new regulatory body should have the power to close managing or letting agent firms, as well as place temporary or permanent bans on individuals from working in the market in the future.³¹ This power would likely be most effective if all letting agents and managing agents were required to be members of a relevant professional body, since the professional bodies would be made aware that the individual is banned by the oversight regulator.

³¹ 80% of respondents agreed or strongly agreed that a regulator should be able to give Local Authorities power to introduce banning orders for the most serious offences.

17.4. Additional recommendations provided by respondents covered a number of possible options that may be of interest to DCLG when consulting further on this issue.³²

Should enforcement responsibility sit with any new regulatory body?

17.5. 78% of respondents indicated that an enforcement responsibility requiring an individual to be a member of an approved or regulatory body should sit with a new regulatory body.

17.6. Although we provisionally propose that a new regulatory body be established in order to carry out enforcement responsibilities in order to ensure letting and managing agents are members of an approved or regulatory body, CILEx would welcome specific consultation on this issue and the potential impact establishing a new regulatory body may have on existing regulatory bodies and the costs faced by letting and managing agents, as well as consumers.

What would be an appropriate penalty for noncompliance?

17.7. CILEx recommends that financial penalties be considered as a penalty for managing or letting agents that fail to comply with the requirement to be a member of an approved or regulatory body.

17.8. In addition to a significant majority of respondents that agreed with our recommendation,³³ respondents also indicated that a regulator should also be able to place a permanent ban, or temporarily prevent individuals from managing or letting properties in England and Wales for a specified amount of time.

³² One respondent recommended that: “a mechanism for the public to report a rogue landlord - similar to the Rentsmartwales scheme to report an unregistered landlord,” would be effective.

Another respondent recommended the introduction of an annual certificate being required to work as a managing or letting agent.

Another respondent commented that any new regulatory should have the same powers “as an approved regulator under the Legal Services Act 2007.”

60% of respondents agreed or strongly agreed that the Government should introduce a database of rouge landlords and agents.

90% of respondents agreed that the Government should introduce a lead enforcement authority in the lettings sector to provide oversight, guidance and support.

³³ 89% of respondents commented that fines of varying levels would be an appropriate penalty for non-compliance.

18. Question 3.6: Should the Government establish a new regulatory body to cover all the issues within leasehold and private rented management, lettings and, potentially, estate agency? Or should separate bodies be established? Please explain your answer.

- 18.1. 78% of respondents agreed or strongly agreed that the Government should consult further on the establishment of a new regulatory body to cover all the issues within leasehold and private rented management, lettings and, potentially, estate agency.
- 18.2. It is worth noting that a smaller proportion of respondents agreed or strongly agreed that the Government should establish separate bodies to cover individual issues within leasehold and private rented management, lettings and, potentially, estate agency. This was in recognition of the value of specialist regulation, however given the comparatively small purview of the potential regulatory framework, CILEx is inclined to propose that one single regulatory authority would be sufficient. We would, however, welcome further consultation on this issue.

Chapter 4 – Rights to switch agents and challenge charges

19. Question 4.1: What changes could be made to ensure that consumers are protected from unfair fees and charges, including major works?

- 19.1. In addition to the comments provided by respondents,³⁴ CILEx has encouraged members to consult directly with the DCLG in order to provide their views on what changes could be made to ensure that consumers are protected from unfair fees and charges.
- 19.2. 90% of respondents agreed or strongly agreed that the cost of major works is particularly problematic for consumers, citing that while major works are well-meaning in nature, when applied in practice, the process can be complex and lead to delays and cost increases.

³⁴ One respondent said that the DCLG could consider introducing a “nationally agreed fee structure & formula for future charges.”

Another respondent said: “Clearer and more open tendering,” could help ensure consumers are protected from unfair fees and charges.

Another respondent said that regulation and guidance should be introduced that would indicate what “reasonable fees and charges,” should be for consumers.

20. Question 4.2: How can we support consumers to challenge unfair fees and ensure that they have a route to redress?

20.1. See 11.1.

21. Question 4.3: How can we make it easier for leaseholders to access their right to manage? What further measures are required to make it easier for consumers to choose or switch agent? Should we introduce a power of veto for leaseholders over a landlord's choice of managing agent?

21.1. A small majority of respondents (40%) indicated that the Right to Manage has been insufficient in addressing the issues faced by leaseholders and individuals.

21.2. It is reasonable to assume, however, that providing a new, suitable and concise regulatory approach is introduced to protect consumers in the letting and property managing agent market, and managing agents are required (through minimum entry requirements and/or through codes of practice) to charge reasonable fees for their services, the demand to access Right to Manage may fall.

22. Question 4.4: Could and should a regulator act as a consumer champion? What powers might they need to support this?

22.1. 80% of respondents agreed or strongly agreed that a regulator could, and should act as a consumer champion by providing information to support consumer choice, and by playing an active role in raising awareness about rights and responsibilities of consumers.³⁵

22.2. CILEx would welcome further consideration on how this could be achieved in practice, (i.e. through a statutory duty, the establishment of a consumer panel, or by through other mechanisms).

23. Question 4.5: Should regulatory bodies have a role in providing information to consumers about the qualifications or performance of property agents?

³⁵ One respondent said: "Consumers need to have confidence in the Regulator as well. Communication is key." Another respondent said: "I think this is a big part of the problem tenants don't know what their rights are and it can be expensive to find out so they don't do anything and just pay/moan about service/move."

If so how could information be of the greatest benefit for consumers? What information should be provided? Should it be public?

- 23.1. 80% of respondents agreed or strongly agreed that regulatory bodies should provide information to consumers about the qualifications or performance of property agents. Respondents commented that this information would help establish greater awareness of the quality of services they should expect from managing and letting agents.

24. Question 4.6: Are there other issues relating to the regulation of letting and managing agents that we should consider? Please explain.

- 24.1. CILEx has encouraged its members to engage directly with DCLG in order to provide their opinions as to whether there are any other issues relating to the regulation of letting and managing agents that they believe should be considered.

For further details

Should you
require any
further
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