

GOVERNMENT REVIEW OF REGULATION AND REDRESS IN THE UK HOUSING MARKET

Final Report to the Department for
Communities and Local Government (CLG)
and the Department for Business, Enterprise
and Regulatory Reform (BERR)

Professor Colin Jones

School of the Built Environment
Heriot-Watt University

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Estate Agencies

National Association of Estate Agents

Letting Agencies

Association of Residential Letting Agents (ARLA)

National Approved Letting Scheme (NALS)

National Association of Estate Agents Lettings Scheme

Leasehold Management

Association of Residential Managing Agents (ARMA)

Association of Retirement Housing Managers (ARHM)

Regulator/ Professional Body

The Royal Institution of Chartered Surveyors (RICS)

Landlords

Residential Landlords Association (RLA)

National Federation of Residential Landlords (NFRLA)

National Landlords Association (NLA)

Caravan Parks

British Holiday and Home Parks Association and the National Caravan Council

Ombudsmen and Redress Schemes

Housing Ombudsman

Independent Consumer Redress Service

Independent Property Codes Adjudication Scheme (IPCAS)

Ombudsman for Estate Agents (OEA)

Surveyors Ombudsman Service (SOS)

Arbitration and Neutral Evaluation Procedures for Surveying Disputes (ANEPSD)

Executive Summary

1. This research project originates from a debate during the passage of the Consumers, Estate Agents and Redress (CEAR) Act 2007 when the government committed itself to a wider review of regulation across the property sector. Currently agents in the various sectors of the housing market defined widely to encompass estate agents, letting agents, caravan parks, HIP providers and private search companies are subject to different legislation. The research assesses the scale and scope of regulation and identifies any gaps/imbbalances across the different market sectors that work to the detriment of consumers. It also considers the scope for simplification and strengthening existing redress provisions and improving consumer awareness.
2. The housing market is complex because transactions embrace a combination of heterogeneous housing, variable legal rights, complex financial products and a wide range of associated housing services such as sales, lettings, valuation, physical surveys, advice and management. This means that information in the housing market as a whole and about individual properties is not readily available. There is also not one clear market place. As a consequence specialist service providers are required to undertake a range of tasks and activities and different types of firms, individuals and organisations support and interact in the housing market. For tenants there is also a continuing legal and often personal relationship with their landlord/letting agent as the provider of their accommodation.
3. There is a growing awareness of consumers' rights and the concept of the Ombudsman has grown and been widely accepted as an approach to dealing with complaints across all aspects of public and many private services including the legal and financial sectors. Statutory regulation of the housing market is much more diverse and incomplete in comparison. It is a patchwork of laws that have built up over decades in a piecemeal fashion that lacks a logical consistency, a reflection of the historic development of legislation which initially focused on physical standards and rent levels rather than consumer rights. Devolution has also brought about different approaches within the UK
4. Over recent years there has been a continuing and extending process of accreditation/registration/regulation of services in the housing market with the introduction of deposit schemes, accreditation schemes for estate agents, schemes for landlords in different guises. The major exception is letting agents. There has also been a rapid and recent growth in non-statutory/voluntary redress schemes, and these mechanisms with an accredited code of practice are increasingly used as the model of regulation. This is arguably a weaker or lower level regulation approach compared with that of financial and legal services, and it has led to apparent inconsistencies of regulatory requirements, for example between estate agents and housing inspectors.
5. There is a range of redress schemes applied from the ombudsman approach through to arbitration which is much more formal and requires the submission of papers by the parties. In all cases they are free to consumer clients and small firms (except the

Arbitration Procedure and the Neutral Evaluation Procedures for Surveying Disputes between firms). These schemes lack a consistent approach to transparency. Virtually all of the established schemes do not publish the names of firms that have had complaints upheld against them.

6. Voluntary accreditation/redress schemes of estate agencies and lettings agencies cover approximately two thirds and a half of their respective market in terms of numbers of agents. ARLA, the main association of letting agents, does not have a binding redress mechanism and the outcomes are not transparent. Currently complaints procedures of landlords associations do not encompass redress mechanisms. The Housing Ombudsman has a very small but significant part of the market. Independent redress is only available for the order of four per cent at most of private tenants renting directly from landlords except with regard to deposits. Landlord associations are not strictly accrediting bodies and are more lobbying organisations.
7. The complexities of regulation of private landlords mean that they can be subject to registration, licensing or accreditation schemes that can vary by location and status, depending for example whether it is a HMO or not and the policy of the local authority. The result is that the meaning of these terms has become rather stretched and difficult for a housing professional, never mind a lay person, to comprehend the layer differences. The experience of Scotland also show that a landlord registration scheme is expensive to establish and a complex task.
8. The vast majority of professionally managed leasehold properties are managed by members of ARMA and ARHM who are subject to management codes of practice approved by the government. Leaseholders managed by ARHM members have recourse to the Housing Ombudsman and a minority of those managed by ARMA can apply to the SOS scheme. All leaseholders have recourse to the Leasehold Valuation Tribunal. These organisations are in the process of establishing a bespoke independent redress scheme with compensation.
9. There are comprehensive regulations and independent redress procedures applicable to the delivery and marketing of HIPs but it is too early to assess how the system is working.
10. There is voluntary regulation of the residential element of caravan parks and park owners' role as estate agents who have recently introduced independent redress, but the scheme appears to have deficiencies in terms of weak publicity and no associated code of practice so there is no performance benchmark.
11. The landscape of redress in the housing market is rapidly changing. There are some moves toward voluntary amalgamation but there are still substantive inter-linkages and overlap of the target audiences between schemes. This is likely to cause some confusion for customers although there is no evidence to demonstrate there is a problem. The system may not be a maze if you are in it but to the outsider looking in it seems unnecessarily complex with consequent fears of a lack of consumer confidence and opportunities for unscrupulous practice.

12. It is difficult to distinguish landlord activities from letting and management agencies. A landlord may undertake the letting of his/her property or use a letting agency. A high proportion of estate agents also offer letting services but only the former activity is regulated. At present the statutory redress schemes cover some of the service activities but not all.
13. Complaints associated with the selling and purchasing of housing is predominantly focused on estate agents (primarily maladministration) and they are the least regulated of the professionals who participate in this transaction. The CEAR Act bolsters the regulation of estate agents and has introduced a statutory redress scheme. However, given that many estate agents have operated an independent voluntary redress scheme for some years and redress sums paid out have been quite low it is debatable that these reforms will substantially address the scale of dissatisfaction with the industry.
14. The highest degree of consumer dissatisfaction in the housing market is in the private rented accommodation which is also the sector that has the least regulated professional services and very limited redress opportunities.
15. The current redress arrangements in the housing market have become quite diverse and better regulation principles imply there is scope for a reduction in the overall complexity or simplification.
16. Overall the analysis demonstrates that there are inconsistencies and gaps in the structure and basis of regulation and redress schemes, and there is scope for reform, extension and rationalisation. At the same time it is important to be conscious of burdens on business and as such competition between independent redress schemes stimulates innovation and contributes to lower charges.

Basic Recommendations

- R1. The high levels of complaints about estate agents reported in Table 7.1 compared with other professional services required in a house sale is a strong argument for improving the standards of these services by further regulation. The CEAR Act requires that all estate agents are subject to a redress scheme, and as this has only just been implemented paragraph 8.4 notes there is an argument for reviewing the impact of this legislation before proceeding with further regulation. However, I remain unconvinced that the additional provisions of the Act will be sufficient. The industry itself is already trying to develop and adopt its own code of practice and industry standards board. It is recommended that government regulations be introduced to ensure that at least the principal professional in a branch has an accredited advanced qualification and thereby following a consistent model with all other service providers in the housing market. Estate agents should also be required to carry professional indemnity insurance and follow an associated code of practice.
- R2. Given the extensive dissatisfaction with the practices of letting and managing agents in the private rented sector (excluding leasehold) despite voluntary schemes it is recommended that they be regulated in the same way as estate agents. It is therefore proposed that the relevant provisions of the CEAR Act be extended to lettings and managing agents, and that government regulations are introduced to ensure that at least the principal professional in an agency branch has an accredited advanced qualification. It is probable that the regulations covering such qualifications could be the same as for estate agents. This would protect the interests of both tenants and landlords.
- R3. The sale and rent back schemes are an area that needs more regulatory attention and it is possible that this could be incorporated at least partially in regulation of letting agencies.
- R4. There are strong arguments for simplifying the current arrangements and extending the availability of a free redress mechanism for private tenants. It is recommended that voluntary accredited schemes should be encouraged via landlords associations.
- R5. There is a need to improve the transparency of redress schemes to ensure the wide publication of the names of firms that have complaints upheld against them as this will provide greater consumer accountability
- R6. There is a strong case for consumer redress schemes in the housing market to be available on a universal basis. This will ideally require shorthold assured tenants to have security of tenure while they seek redress to avoid retaliatory eviction.
- R7. The residential caravan sector has recently introduced a voluntary redress scheme but it should be encouraged to combine it with a formal code of practice that encompasses the estate agency role of park operators.

- R8 No specific recommendations for change are made for leasehold management or the marketing and delivery of HIPS. The former is well regulated and is in the process of establishing a bespoke independent redress scheme. It is too early to assess the redress arrangements in the latter.
- R9 There is no overarching housing ombudsman in the housing market unlike in the financial and legal services but to move to such a position directly would cause considerable and unnecessary uncertainty. There is still much to learn about the delivery of redress especially in the private rented sector. In the current state of redress in the housing market the priority should be on simplification and filling gaps.
- R10 An approach involving limited upheaval is to modify the existing redress schemes to minimise overlaps of redress schemes and to offer one for different services or activities within the housing market. The private sector should be encouraged to move in this direction by voluntary agreement.
- R11 To provide a single gateway into redress in the various sectors of the housing market it is recommended that a bespoke website is created with links to the relevant redress schemes. The different redress schemes should come together to promote a collective private funded initiative. An alternative approach would be to use a portal on a government website.

1. Introduction

- 1.1 This research project originates from a debate during the passage of the Consumers, Estate Agents and Redress Act 2007 when the government committed itself to a wider review of regulation across the property sector. Currently agents in the various sectors of the housing market defined widely to encompass estate agents, letting agents, caravan parks, HIP providers and private search companies are subject to different legislation. The research assesses the scale and scope of regulation and to identify any gaps/imbances across the different market sectors that work to the detriment of consumers. It also considers the scope for simplification and strengthening existing redress provisions and improving consumer awareness. Finally the research sets out recommendations on how best to address issues that emerge to improve the effectiveness and efficiency of regulation/redress arrangements in different sectors.
- 1.2 The recent Act provides powers for the Government to require all estate agents to belong to an approved redress scheme and these provisions were enacted on 1 October 2008. HIPs legislation requires that all estate agents in England and Wales who market homes with such packs must belong to an approved independent redress scheme for HIP-related complaints. Statutory deposit schemes have recently been introduced as a requirement for all private landlords in England and Wales with an associated independent redress mechanism. There are also distinct statutory redress schemes for solicitors, conveyancers and mortgage lenders and a range of non-statutory or voluntary schemes. The differential approaches to redress are mirrored by apparent inconsistencies in regulation across the housing market. Concerns have been expressed about the current position by key players in the sector, for example the Association of Residential Letting Agents has called for the licensing of letting agents since the Housing Act 1988 introduced assured shorthold tenancies.
- 1.3 The government's overall aims are to ensure that consumers are treated fairly; to minimise those left without redress by ensuring they have sufficient information about how to pursue a complaint and also to create a level playing field in future redress arrangements. The review will address the following related and overlapping goals:
1. Detail and compare the balance of regulation across all those businesses involved in housing transactions, owning and renting, together with leasing of land for park homes and caravans on sites. As part of the process it will identify the relative costs of regulatory burdens on industry;
 2. Assess whether the current forms of redress from estate/letting agents are adequate and workable for tenants and landlords, residents of park homes and caravans on sites (new house sales are excluded);

3. Review the nature and scale of unscrupulous activities and abuses by site owners acting as agents and the links to gaps in the current level of consumer protection and hence the scope for potential consumer detriment.
 4. Propose potential alternatives/solutions to the present regulation/redress regimes that simplify and create equity across sectors.
- 1.4 The research will analyse the current regulatory frameworks as a base for proposing future policy avenues and draw on a range of very disparate sources. This report is structured in the following way. First it focuses on providing a review of the details of existing statutory regulation and redress in the housing market in its broadest sense except for new building and property clubs (specifics of Northern Ireland are not included). The next section examines the nature of non-statutory/voluntary redress and complaints schemes. The following section gives an overview of these schemes, their coverage of the market, the extent of inter-linkages and overlap between them and a review of individual schemes. Section 5 details the cost structures of redress schemes and this is followed by a section that summarises the gaps, inconsistencies and unregulated activities in the housing market. The next two sections examine the nature of complaints and the level of dissatisfaction in different sectors and then draws conclusions about the appropriateness of the current structure of regulation and redress. Finally Section 9 offers a series of recommendations for change.
- 1.5 A parallel but independent review of residential property regulation by Sir Bryan Carsberg (2008) sponsored by professional bodies has also been completed. In addition an independent review of the future of the private rented sector for the Department for Communities and Local Government by Rugg and Rhodes (2008) has just been published. Both overlap the subject of this research but are not referred to in this report.

2. Statutory Regulation and Redress

- 2.1 The housing market is complex because transactions embrace a combination of heterogeneous housing, variable legal rights, complex financial products and a wide range of associated housing services such as sales, lettings, valuation, physical surveys, advice and management. This means that information in the housing market as a whole and about individual properties is not readily available. There is also not one clear market place. As a consequence specialist service providers are required to undertake a range of tasks. The range of activities and types of firms, individuals and organisations supporting and interacting in the housing market, combined with standards and policies that have been developed and changed over a long timescale, contributes to a diverse collection of regulation and redress mechanisms. For tenants there is also a continuing legal and often personal relationship with their landlord/letting agent as the provider of their accommodation.
- 2.2 This section takes a historical perspective on the development of statutory regulation in the housing market but focuses on the detail of recent changes. It also draws on the equivalent developments in the financial and legal service sectors partly because they are housing market services in their own right but also because they provide a useful comparator for the housing market. The analysis also compares differences between England and Scotland
- 2.3 Initial regulation of the housing market took the form of public health laws in the nineteenth century. During the First World War, in 1915, the first controls of the housing market as opposed to the stock were introduced in the form of rent control. Over the next seven decades there were various forms of regulation (and deregulation) of private tenancies encompassing rents and security of tenure. Accommodation agencies were also regulated by the Accommodation Agencies Act 1953. From the 1960s after a notorious period of exploitation by private landlords, and the term Rachmanism entered into the language, tenants were also given more statutory rights. However, the problem with these statutory rights and the public health laws is that they are only enforceable by courts which are not easily accessible to tenants and there are few lawyers who specialise in this area.
- 2.4 The focus of this legislation was the regulation of private landlords as the worst housing problems were concentrated in this sector of the housing market at that time and it represented a much larger proportion of the market than today. The first legislation aimed at regulating the owner occupied market was the Estate Agents Act 1979 and estate agents to date have been regulated primarily by this Act and the Property Misdescriptions Act 1991. The 1979 Act has a form of negative licencing and bans certain individuals such as undischarged bankrupts from acting as estate agents. It also sets out professional standards on billing clients, services to purchasers, explain terms of business and declare personal interests in transactions, The Consumers, Estate Agents and Redress (CEAR) Act has updated this legislation.

- 2.5 Since the late 1950s with the creation of the Consumers Association there has been a growing awareness of consumers' rights and this has had a number of implications for the housing market. The term 'Ombudsman' was introduced into the UK in 1969 with the establishment of the Parliamentary Commissioner for Administration to deal with complaints against central government departments. An Ombudsman offers an alternative way to the courts of achieving justice or redress that is potentially quicker, more informal and certainly cheaper. The concept has grown and been widely accepted as an approach to dealing with complaints across all aspects of public and many private services.
- 2.6 Self regulation of mortgage lending was introduced by the industry with the "Mortgage Code" for mortgage lenders in 1997 and financial intermediaries in 1998. Compliance with this code was monitored by the Mortgage Code Compliance Board set up in 1999. This self regulation was replaced on 31 October 2004 by the Financial Services Authority (FSA) and the Mortgage Code of Business. All financial advisers are required by the FSA to pass examinations known either as the Certificate in Financial Planning (Cert FP) or the Certificate in Financial Advice (CeFA) before they are allowed to provide financial advice. The Financial Ombudsman Service was established at the same time and offers a flexible one stop service to settle disputes in that sector including mortgage lending and can require a firm to pay compensation up to £100,000. These dual arrangements underpin confidence in this sector with the FSA setting and enforcing service standards. There is also a Financial Services Compensation Scheme for claims against firms that are no longer in business and have insufficient assets to pay claims.
- 2.7 There are similar arrangements for legal disputes except that complaints are in three stages – the firm, the professional body, such as the Legal Complaints Service of the Law Society and then the respective ombudsman. The Legal Services Ombudsman, set up by the Courts and Legal Services Act 1990, provides an independent complaints service for the professional bodies of the Law Society, the General Council of the Bar, and Council for Licensed Conveyances in England and Wales. There is an equivalent organisation in Scotland. The Legal Services Act 2007 will transfer complaint handling from the legal professions to the Office for Legal Complaints.
- 2.8 Within housing there is a statutory redress scheme specifically for tenants of social housing. The Housing Act 1996 requires all registered social landlords to be members of the Housing Ombudsman. The service covers all landlords registered with the Housing Corporation and any landlord who has taken over local authority homes, such as a 'local housing company'. Council tenants do not fall under the remit of the service but they can make complaints to the Local Government

Ombudsman.

- 2.9 There are no structures of regulation and statutory redress for services supporting the private housing market although professional bodies have introduced their own non-statutory schemes. The Law Commission report, *Renting Homes*, in 2006 noted the imbalance between bargaining power of an occupier and a landlord and recommended a new “consumer protection approach” that focused on the contract between the landlord and the occupier incorporating fairness and transparency so that both parties understand their rights and obligations. These conclusions are encapsulated in model tenancy agreements. The report also proposes the extension of the 1999 Unfair Terms in Consumer Contracts Regulations to all landlords and occupiers.
- 2.10 A subsequent proposal set out in a 2007 consultation paper on the role of tribunals in England and Wales by the Law Commission has focused on whether to change the current procedures for redress in the courts that are split between the county courts and the various residential property tribunals. There are currently three tribunals operated by the Residential Property Tribunal Service - Residential Property Tribunals (RPTs), Rent Assessment Committees and Leasehold Valuation Tribunals (LVTs).
- 2.11 RPTs have a range of functions (enhanced by the Housing Act 2004) that include adjudicating appeals on
- Designation of a dwelling as unfit under the Housing, Health and Safety Rating System and subsequent actions required by a local authority such as an improvement or a demolition order
 - Refusal of an HMO licence to a landlord or conditions set by a local authority (see para 2.24)
 - Rejection of a right to buy application by a local authority or housing association.

Local authorities also have to apply to the local RPT to seek to implement a discretionary management order on a landlord and similarly for Empty Dwelling Management Order. Rent Assessment Committees deal with appeals against the levels of fair rents for regulated tenancies and market rents for assured tenancies.

- 2.12 LVTs offer a source of redress for leaseholders in England & Wales and they can handle a whole range of types of dispute.

2.13 The Law Commission considered alternative options, the creation of a new specialist housing court, or the more favoured approach of some rebalancing of some types of cases from the county court to specialist tribunals. Candidates for moving to tribunals include claims for repossession and disrepair of rented housing and possession of caravans. These are only proposals and are currently being considered as part of a wider review of tribunals by the Ministry of Justice.

- 2.14 The Scottish Government has already embraced the idea of a specialist tribunal with the establishment of the independent Private Rented Housing Panel (PRHP), on 3 September 2007. The PRHP was created from the existing Rent Assessment Panel for Scotland which has had a long standing role to ensure fair rents for tenants and landlords across Scotland (the equivalent of Rent Assessment Committees in England and Wales). It aims to make the process of making or defending disputes simple and straightforward, quicker and easier than going to court. There are two options for resolving a dispute – by committee or mediation and the parties can choose.
- 2.15 Other legislative developments aimed at the housing market have similarly endorsed and indeed emphasised the concept of consumer rights by focusing on the introduction of redress schemes. The Housing Act 2004 required that estate agents marketing Home Information Packs (HIPs) belong to a redress scheme that is approved by the Department of Business Enterprise and Regulatory Reform (BERR). The subsequent CEAR Act 2007 extends the scope of redress schemes to all the activities of estate agencies involved in buying and selling houses from 1 October 2008.
- 2.16 HIPs were introduced in England and Wales on a phased basis from 1 August 2007. A similar scheme, Home Report, will be introduced in Scotland from 1 December 2008 that will also include a valuation/condition survey. Currently sellers of existing homes in England and Wales need to have commissioned a HIP before putting their property on the market. The legislation requires that all estate agents in England and Wales who market homes with such packs must belong to an approved independent redress scheme for related complaints. There are three redress schemes approved to date under the Housing Act 2004, for the purpose of dealing with HIP-related complaints. These are:
- *Ombudsman for Estate Agents' HIPs redress scheme*
 - *Surveyor Ombudsman Scheme provided by TOSL*
 - *IDRS Ltd Property Adjudication for Consumers Scheme (PACS)*

The PACS scheme, however, is no longer marketed.

- 2.17 There is a requirement for one other statutory redress scheme within the housing market. All private landlords in England and Wales are required to join a statutory tenancy deposit scheme if they let on assured shorthold tenancies and take deposits. There are three recognised schemes and all are required to have an alternative

dispute redress mechanism. The tenancy deposit scheme is mandatory for all tenancy agreements since April 2007. The three schemes are:

The Tenancy Deposit Scheme (TDS)

This is an insurance-based scheme run by The Dispute Service that was established in 2003 to provide independent dispute resolution and complaints handling for the lettings industry. It is backed by two professional bodies for letting agents in the residential property sector, NFPP and RICS.

Tenancy Deposit Solutions Ltd (TDSL)

Another insurance-based scheme; it is a new company sponsored by the National Landlords Association and administered by Hamilton Fraser Insurance.

The Deposit Protection Service (The DPS)

This is the sole custodial scheme - the running costs of this scheme are funded entirely from the interest earned on all the deposits held by the scheme. This scheme is open to all landlords and agents and is run by Computershare who have administered parallel schemes in other parts of the world, particularly Australia and New Zealand.

- 2.18 IDRS provides the dispute resolution service for the latter two schemes. TDS and TDSL charge to join while DPS is free to landlords. All the alternative dispute redress schemes are free to tenants.
- 2.19 The tenant does not have the option of choosing the custodial or insurance-backed scheme – it is for the landlord/agent to decide which of the schemes will be used to protect the tenancy deposit. Existing deposits on assured shorthold tenancies already in place will fall under the legislation if and when a fixed term renewal is created. A deposit on a pre-existing assured shorthold tenancy does not have to come under the new regime. The legislation does not apply in Scotland initially although there is provision in the Housing Act 2004 for similar provisions to be introduced at some stage in the future.
- 2.20 These HIP and deposit redress schemes are relatively new so it is useful to set out the detail of how they work, the principles that are applied and the participants, but it is not an indication of their importance or significance to the operation of the housing market. These redress schemes require a formal code of practice as a benchmark to assess a complaint but do not have a statutory support system of regulation such as operated by the FSA. However, the Property Codes Compliance Board (PCCB) is a voluntary scheme representing most of the industry and its role is to ensure registered firms, providing property search reports and HIPs, comply with the Search Code and the HIP Code (see para 3.5).

2.21 Professional bodies partially fulfill the role of the FSA in the housing market. Most key service providers in the housing market require professional qualifications or membership of an accredited body that is also recognised by the government. This principle applies to the new ‘profession’ of home inspectors (HIs) who undertake the compilation of home condition reports and energy performance certificates. They are required to belong to a government accredited scheme that ensures:

- HIs are fit and proper people
- The background of HIs is checked, including carrying out a criminal records bureau check
- HIs are qualified to carry out their duties
- HIs have insurance to deal with any claims that may arise
- The quality of work of HIs is checked
- HIs can have their membership suspended/cancelled if their work falls below acceptable standards
- HIs deal with complaints in a fair, quick and transparent manner
- A public register of its members is kept

HIs also need a degree level qualification in home inspection. The major exception to regulation in this way is letting and estate agencies. The CEAR Act 2007 while requiring statutory redress for estate agents does not introduce formal licensing of estate agents such as the requirement for formal qualifications and training. The Act also does not apply to letting agencies.

2.22 The movement to improve consumer rights has not been the only driver of regulation initiatives over the last decade. There remain the long term policy concerns about the private rented sector. Traditionally the poorest housing stock has been in the rented sector but the image and general standard of the housing has improved with the growth of the tenure much of which has been a move up-market. However, in parallel there has also been the extension of down-market private renting. Some of this is in predominantly public sector communities either houses formerly sold under the Right to Buy or improvement for sale in peripheral estates. There is also quite a concentration in inner city flats with immigrants living in difficult conditions.

2.23 Over the last five years there have been concerns expressed about management in the private rented sector in terms of knowledge and application of regulations, better management standards, complying with health and safety regulations, and investing more in repairs and maintenance. In policy terms these have crystallised in terms of the registration of landlords, national deposit schemes and the licensing of houses in multiple occupation but also by a review of legal/dispute procedures for redress already discussed.

2.24 The Scottish Executive introduced mandatory licensing of houses in multiple occupation (HMOs) in October 2000. A licence is required for every house or flat where three or more people live who are not all members of one family or of one or other of two families. Flats or bedsits which are otherwise separate are considered part of one house if they share cooking, washing or toilet facilities. Before awarding a licence, the local authority will make sure that acceptable standards are met in three categories:

- ***Fit and proper person*** - the landlord, and any agent managing the property, must be considered a fit and proper person to hold a licence. The local authority will decide this based on individual circumstances
- ***Tenancy management*** - ensuring there are proper tenancy agreements which set out the rights and responsibilities of the tenants and the landlord.
- ***Physical conditions*** - including space, facilities for cooking and washing, and safety of the building.

2.25 HMO licensing also came into force across England in April 2006. There are two types of licensing – mandatory and additional. Mandatory licences apply to HMOs which have three or more storeys and are occupied by five or more persons forming two or more households. Additional licensing powers enable a local authority to impose licence on residential accommodation in its area not covered by mandatory licensing. A council can do this if it considers that a significant proportion of properties in a specific area are being managed sufficiently ineffectively that there are particular problems for the residents or the general public such as anti-social behaviour. The granting of a licence requires the meeting of acceptable standards broadly equivalent to those in Scotland. These are the suitability of the property for the number of occupiers, the suitability of the facilities, a ‘fit and proper’ test for the landlord and the appropriateness of management arrangements. Landlords pay a fee for a (maximum) five year licence from the local authority in both England and Scotland.

2.26 The Housing (Scotland) Act 2006 introduced the repairing standard for private landlords. From 3 September 2007 a landlord has a duty to make sure that the house meets the repairing standard. Tenants can apply to the PHRP for a ruling that their landlord has failed to meet this duty with procedure set out in para 2.10 above.

2.27 Regulatory changes in Scotland toward this sector from 30 April 2006 also require all private landlords to register with their local authority. There are exemptions for lets to family members, properties for holiday use and resident landlords. This is designed to give tenants assurance that landlords are fit and proper people to let property, and give the local authority a full picture of the private rented sector in their area. As many as 12,000 landlords in Glasgow for example have applied but the

registration has proved very slow and messy. By January 2008 just over half of the applications in Scotland had been processed as the resources required had been underestimated. The registration of landlords is required under the Anti-Social Behaviour (Scotland) Act 2004 and before approving a landlord's application for registration, local authorities must be reasonably satisfied that the applicant is 'fit and proper' to act as a landlord.

2.28 The Law Commission in its 2007 consultation paper, "Encouraging Responsible Letting" took a different tack for England and Wales and proposes self-enforced regulation "based on a partnership between those representing landlords and their agents and Government". The Law Commission focuses on housing management and proposes that all landlords be part of a professional association or an accreditation scheme. They suggest three options are available:

- join a local authority accreditation scheme (for example Manchester already has such a scheme),
- become a member of one of the associations of private landlords, or
- let their premises through a letting agent who is a member of one of the letting agents professional bodies

Its proposals are completed by the appointment of a regulator to accredit and monitor schemes for compliance. It is also implicit in the scheme that the self-regulatory organisations would have to have or would have to provide access to a (non-court) dispute resolution service.

2.29 Caravans are also part of the wider housing market. It is estimated that approximately 250,000 people in the UK live in permanent residential mobile homes or park homes. The residential sector comprises both rented and owner occupied park homes or caravans. Park homes are a unique form of housing tenure, recognised under dedicated legislation (where they are called "mobile homes"). This includes the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968 and the Mobile Homes Act 1983. Tenants of park homes have such security of tenure as is afforded by the Caravan Sites Act 1968. Owner-occupiers of homes have the more extensive security given by the Mobile Homes Act 1983 (as amended), which includes provision for the resolution of disputes by the county court in England or by arbitration. The Department for Communities and Local Government in 2008 issued a consultation paper on dispute resolution with a view to transferring the jurisdiction from the county court to the residential property tribunal.

2.30 Caravan sites also have to have a licence from a local authority to operate and park owners have to follow the conditions laid down by this licence. Some of the provisions of the site licence may have obligations on individual caravan owners and so must be included in the licence agreement between the caravan owner and the site

operator. It is understood that there will be a consultation by the government on possible reform of caravan site licensing legislation towards the end of 2008.

- 2.31 In summary statutory regulation of the housing market is much more diverse and incomplete compared with the financial and legal services sectors. In part this may have occurred because of the diverse range of activities that comprise the private housing market but it is also a reflection of the historic development of legislation which initially focused on physical standards and rent levels rather than consumer rights. Statutory regulation of housing professionals to the standards as set out in the finance sector does not include letting, managing or estate agents.
- 2.32 Devolution has also brought about different approaches within the UK. Forms of statutory redress in the private housing market are restricted to deposit schemes in England and Wales, repairs in Scotland and estate agency activities across the UK when the CEAR Act is operationalised. There is also statutory regulation relating to the management of rented property through the registration of landlords but such schemes differ with regard to their terms of reference, apply to only certain landlords and may also vary with local area. In Scotland regulation of landlords also includes a repairs standard. Regulation of the private landlord is subject to local interpretation.

3. Non-Statutory and Voluntary Regulation, Redress and Complaints Schemes

3.1 There are a range of voluntary redress/complaint schemes in the housing market operated by a range of different organisations. There is a similar facility run by the trade associations for caravan parks. This section details the different schemes and provides a brief introduction as a base for more detailed analysis in the next. It distinguishes between complaints procedures and independent ombudsman and between Scotland and England. The final part of the section also offers a brief background to the development of the ombudsman schemes.

3.2 The analysis identified the following organisations that have some form of individual complaints procedure:

Estate Agencies

National Association of Estate Agents

Letting Agencies

Association of Residential Letting Agents (ARLA)
National Approved Letting Scheme (NALS)
National Association of Estate Agents Lettings Scheme

Leasehold Management

Association of Residential Managing Agents (ARMA)
Association of Retirement Housing Managers (ARHM)

Professional Body

The Royal Institution of Chartered Surveyors (RICS)

Landlords

Residential Landlords Association (RLA)
National Federation of Residential Landlords (NFRL)
National Landlords Association (NLA) (NFRL and NLA have subsequently amalgamated)

Caravan Parks

British Holiday & Home Parks Association (BH&HPA) and the National Caravan Council (NCC)

- 3.3 There are parallel but distinct organisations in Scotland reflecting in part the different legal system. The Property Managers Association Scotland is the Scottish counterpart of ARMA and its members manage the common administration and repairing of multi-occupied properties especially tenement flats for their owners. The Scottish Association of Landlords is open to all responsible landlords while rural landlords may also belong to the Scottish Rural Property and Business Association.
- 3.4 The Scottish Government launched a national landlord accreditation scheme, “Landlord Accreditation Scotland”, in April 2008 designed to promote good practice. The scheme aims to raise standards by encouraging private landlords to seek voluntary accreditation as a way of rewarding them for maintaining their properties to certain standards. It will also allow people looking for a property to find out which landlords are meeting the requirements. The rolling out of the scheme across Scotland follows a number of successful pilots in local authorities. The national accreditation framework will be based on the National Core Standards for Private Landlords developed by Communities Scotland. The requirements with regard to addressing complaints by tenants in this guide are limited to communicating a complaints procedure, having written records and timeous responses to disputes. The Scottish Landlords Association and the Scottish Rural Property and Business Association will run the scheme during its set up period with funding from the Scottish Government. The scheme includes letting agents but again there is limited consumer protection for their clients as there is no requirement for agents to have insurances in place such as professional indemnity insurance, client money protection insurance, particularly relevant in Scotland where there is no tenancy deposit protection at present, and no verification of accounting practices. The scheme is expected to be ultimately driven by private landlords and letting agents themselves, working closely with local authorities.
- 3.5 There are a number of ombudsmen that operate in the housing market some of whom are linked to the redress schemes/professional organisations noted above albeit independent entities. Besides the Housing Ombudsman already referred to there is also the Independent Property Codes Adjudication Scheme (IPCAS) that deals with complaints abouts HIP providers and property search companies, the Ombudsman for Estate Agencies (OEA) and the Surveyors Ombudsman Service (SOS). These are listed as useful summary below:

Housing Ombudsman

Independent Consumer Redress Service

Independent Property Codes Adjudication Scheme (IPCAS)

Ombudsman for Estate Agents (OEA)

Property Adjudication Scheme for Consumers Scheme (PACS) (now withdrawn)

Surveyors Ombudsman Service (SOS)

Arbitration and Neutral Evaluation Procedures for Surveying Disputes (ANEPSD)

- 3.6 IPCAS is operated by IDRS Ltd, a wholly owned subsidiary of the Chartered Institute of Arbitrators, in association with the Property Codes Compliance Board (PCCB), the Association of Home Information Pack Providers (AHIPP) and the Council of Property Search Organisations (CoPSO). In addition the Property Codes Compliance Board ensures that CoPSO and AHIPP members providing property search reports and HIPs respectively comply with the relevant codes of practice, the Search Code and the HIP Code. It was established in September 2006 and follows the same model as regulation in the financial services industry. The PCCB monitors the performance by monitoring sample search and HIP products selected randomly from every firm and a physical audit that includes checks on key business processes, documentation and consumer complaints procedures. A risk model is used to select particular firms for audit. This regime is in its infancy having been launched in November 2007 after a pilot study.
- 3.7 The OEA was set up as OCEA in 1989 and became operational in 1990 for corporate estate agents. It was established in its present form on 1 January 1998 as an independent body open to the whole market. OEA extended its services to letting agencies in 2006. It offers an independent service for dealing with disputes between its member agencies and consumers falling within specified terms of reference. The OEA scheme is mandatory for agents run by NAEA principals, partners and directors offering an estate agency service. Coverage has recently been extended to be similarly mandatory for letting agencies run by NAEA principals, partners and directors in 2007 and members of NALs in 2008. About 30% of the agents that are members of OEA are independent agents not affiliated or members of any professional body.
- 3.8 In 1998 RICS introduced a mandatory complaints handling procedure for members that must encompass an independent redress scheme. The RICS set up SOS as an independent entirely free voluntary service to handle complaints about its members. The SOS was first launched as a pilot in Scotland in January 2004 and was extended to the whole country on 1 June 2007 and so is a new service. The RICS have appointed TOSL to provide an independent redress for complaints about any firm which chooses to become a member of the scheme, and this includes firms which are not members of RICS. The activities covered include acting as estate, letting and management agents, and valuation and surveys, as well as home inspections and domestic energy assessments. SOS has also been approved by the FSA to deal with those regulated firms involved with insurance mediation.
- 3.9 The Housing Ombudsman service was set up for tenants of registered social landlords but also includes private landlords which have joined it voluntarily including unregistered subsidiaries of registered social landlords. The ombudsman is actively promoting his service to the private sector (and once had an arrangement

- with the caravan trade bodies). Individual landlords' associations have complaints procedures but do not offer redress (see Section 4).
- 3.10 PACS is a statutory approved redress scheme to resolve complaints made against estate agents as part of the home information pack selling process, but as noted above but it has now been withdrawn.
- 3.11 The OEA and SOS redress schemes have been formally approved by the Office of Fair Trading to handle complaints about estate agents under the CEAR Act from 1 October 2008. All estate agents are required to belong to one of these schemes.
- 3.12 There are voluntary regulation and redress arrangements for caravan dwellers. The analysis here includes regulation and redress for caravan sites as a whole even though the holiday sector, which consists in part of owner-occupied caravans, is not strictly part of the UK housing market, as licensing and planning restrictions prevent occupation for purposes other than holiday and recreational use. The British Holiday & Home Parks Association (BH&HPA) and the National Park Homes Council (NHPC), a specialist division of the National Caravan Council, offers conciliation and arbitration to consumers of the holiday and residential sector alike.
- 3.13 The "voluntary redress scheme" applicable to the park homes sector, including disputes concerning park operators as estate agents, is the Independent Consumer Redress Scheme (ICRS), which is operated by IDRS Ltd. Both the industry trade associations, NPHC and BH&HPA, are members of the ICRS on an equal footing since August 2007. It provides for informal conciliation, to help the parties settle the dispute themselves, or otherwise to recommend a potential solution, which becomes binding if both parties agree to abide by it. Should conciliation fail, there is recourse to legally binding arbitration or ultimately redress through the courts.

4. Analysis of Non-Statutory/Voluntary Schemes

4.1 The analysis in this section reviews each of these non-statutory/voluntary schemes and ombudsmen by a set of common criteria. The overriding basis for these criteria is natural justice and best practice to achieve this. The criteria are based on those developed by the Office of Fair Trading (2008a) for the approval of estate agency redress schemes. The information on individual schemes has been collected from official websites, annual reports, in some cases telephone interviews and written responses to an initial draft. The purpose of this analysis is not to choose between the individual schemes but to assess differences, overlaps and coverage. The specific criteria and associated measures are as follows:

1. *Ease of Application for Redress*

Accessibility of the scheme to complainants.
Clarity of procedures
Cost to the complainant
Free exchange of information between parties

2. *Explicit internal Complaints Procedure*

A written procedure available to customers

3. *Explicit Timescale for addressing a Complaint and any Potential Redress*

Formal and transparent timescales for stages in the resolution of a complaint

4. *Services Standards Code*

Published code of practice
Code of practice incorporates best practice

5. *Sector Coverage of Scheme*

The percentage of the relevant market covered by the scheme measured by the number of properties owned or number of agents.

6. *Scale of Compensation Available*

Awards are appropriate to the detriment caused
Any limits on financial compensation

7. *Redress and Disciplinary Penalties for Contravention*

Penalties for infringement of code of practice
Procedures for non-compliance of decisions

8. *Independence of Redress*

The impartiality and power of the ‘arbitrator’
The independence of the appointment process
Length of term of office if applicable
Publication of annual report

9. *Financial Security of Scheme*

Adequacy of staffing to permit effective investigation of complaints

10. *Publicity and Information on Scheme*

Mechanisms for informing customers of complaints procedures

11. *Consumer Perceptions*

Regular assessments undertaken of consumer’s views on the effectiveness of the scheme

12. *Quality Assurance Procedures*

The scheme promotes member’s quality assurance procedures with regard to the effectiveness of activities and complaints handling in particular.

4.2 Individual reviews providing details of schemes are given in the Appendix and can be treated as the primary data for the next section that presents an analysis. There is a degree of overlap between complaints procedures and redress schemes because they are linked but logically regulators and ombudsman/redress schemes should be treated separately. Because of the overlap the same criteria are applied to both procedures and this also serves to highlight the differences. Many of the redress schemes have only been introduced in the last year so that means that there is limited evidence on statistics and their past performance. Inevitably there is therefore a degree of unevenness in details available.

4.3 The remit of the research does not include the sale of new houses (other than via agents) and hence the house building industry and property clubs are excluded. Although the study is examining voluntary or non-statutory schemes in doing so it also includes all three government recognised HIPs redress schemes as they have ambitions to offer redress across the wider housing market.

4.4 There are a wide range of organisations and associated complaint/redress schemes operating in the housing market. The purpose of this section is to consider the extent of coverage, overlap, and gaps that exist. Within this framework the analysis

also reviews the role of regulation/redress procedures of professional bodies versus activity or specific service based schemes, the differences between schemes and approaches to codes of practice. To begin with it is useful to review again the spread of activities that comprise the housing market. Services roles in the housing market can be characterised as:

- estate agency buying or selling a property on behalf of a client and providing opportunities and advice to customers who are prospective purchasers,
- letting agency offering services to landlords as the clients and tenants as customers,
- management of the stock on behalf of owners,
- information services for housing transactions including valuation, surveys, etc.
- providing housing for rent (landlordism),
- providing space on caravan parks

4.5 The complexity is compounded by the fact that the same organisations often undertake a range of these activities. Nevertheless the starting point for the analysis is to consider each role in turn.

Estate Agents

4.6 The number of estate agents is unknown but it is often assumed that there are about 12,000 estate agent offices in the UK. Currently the only source of statistics is the OEA and so these statistics are drawn on in this report although it should be accepted that they are incomplete. There are an unknown number of independent agents that do not belong to professional or trade bodies.

4.7 The main trade organisation is the National Association of Estate Agents (NAEA) with 2,869 members covering 4,609 branches operating as independent estate agents (as of 3/01/08). Large corporate estate agents also represent a substantial part of the sector, at least equivalent to the number of NAEA branches. RICS members are also active in residential agency but they are likely to have only a minority market share.

4.8 The OEA is the longest established independent redress scheme and it is mandatory for NAEA members. The OEA has a wide membership that includes RICS members, large corporate agencies who represent as many branches as NAEA, and independent or direct members as shown in Table 4.1. The scheme as a whole has approximately 11,000 branches undertaking residential agency. The OEA seems therefore to have the vast majority of residential estate agency offices signed up as members. In 2007 two new redress schemes, PACS and SOS, were introduced to offer their services to estate agencies. PACS had little take up and was subsequently withdrawn.

- 4.9 The OEA Scheme has had OFT approval for its Code of Practice granted under the Consumer Codes Approval Scheme and its redress scheme (with SOS) has been approved under the CEAR Act. The redress approach of OEA and SOS depends on the case but could be reconciliation, mediation or a full review. Both schemes offer redress up to broadly £25,000.

Table 4.1 OEA Members as at 1 January 2008

Types of Members	Members	Branches		
		Sales Only	Lettings Only	Sales/Lettings
NAEA	2869	2520	552	1789
RICS	479	1361	14	403
Direct	1566	1660	73	840
Corporate	13	2352	5	72
HIP's Only	459	N/A	N/A	N/A
TOTAL	5386	7893	644	3104

Source: Ombudsman of Estate Agents

Letting Agents

- 4.10 There are three overlapping professional bodies, ARLA, NAEA and RICS, and one letting agency accreditation schemes – NALS. NALS has a defined set of service standards underpinned by the OEA Code. ARLA and NAEA have recently amalgamated to form the National Federation of Property Professionals but will continue to operate as separate divisions retaining their own brand name, and they have yet to agree a common regulation and redress scheme. All except RICS operate a similar code of practice/conduct that provides a benchmark for customer service and complaints procedures. In contrast the RICS code is principle based although firms have to have a complaints handling procedure. Nevertheless RICS shares a guidance note on practice in lettings with ARLA/NAEA.
- 4.11 The number of letting agencies in the UK is even less certain than the number of estate agents. Informal estimates suggest the number is probably somewhere in the range 10-12,000. Part of the difficulty is definition, for example a landlord could operate a letting agency for its own properties. The overlaps noted above means that it is difficult to assess the proportion of letting agents covered by accreditation/redress schemes. ARLA has 1,800 member offices throughout the UK including large multi-branch national companies as well as the smaller single office practices. There are only 386 RICS members with lettings offices that are part of the OEA scheme and it is unclear what the percentage of RICS involvement is in this activity because RICS statistics are not available. NALS has around 1,600 branch members

and is unique among organisations in the sector in carrying out a customer service audit.

- 4.12 It would seem that the proportion of letting agency offices belonging to an accredited scheme is around 50-60%. It is probable that the unaccredited offices deal with smaller numbers of lettings so that the actual proportion of the lettings market dealt with by accredited offices could be much higher.
- 4.13 The OEA scheme is mandatory for agents run by NAEA principals, partners and directors offering a lettings service but is relatively new. The OEA started registering agents in April 2006 with complaints accepted from June of that year. As Table 5.1 shows by the end of 2007 there were over 2,300 NAEA offices signed up for lettings, about three quarters are offices that deal with sales as well. Adding OEA members from outside the NAEA brings the number of letting agency offices registered in the scheme to 3,748. NALS switched to the OEA scheme for the final stage of adjudication on complaints from both tenants and landlords from the beginning of 2008. NALS has approximately 1,600 offices accredited of which half also belong to another affiliated organisation and half are non-affiliated. The net increase in OEA membership was only 580 offices.
- 4.14 There are at present two main redress schemes within letting agents, ARLA and OEA. The OEA scheme is relatively new. The ARLA scheme is more long established but its outcomes are not transparent as they are not published. The ARLA scheme is essentially a complaints handling mechanism with no mandate for compensation to complainants. As a trade body it can only recommend outcomes to agents as it is not an arms length dispute resolution scheme. ARLA requires its members to switch to OEA from September 2008 as their annual subscription is renewed.
- 4.15 The SOS scheme is also available as a redress mechanism but like its role in the estate agency market seem to have a limited foothold in this sector.
- 4.16 The largest independent redress scheme is the OEA, after the absorption of the NALS accreditation scheme it may have 40% of the market. At present there are four accreditation schemes and four potential different schemes for making a complaint about a letting agent and all can possibly lead to independent redress (ARLA's scheme only recommends compensation). In many cases the precise route for redress will follow from the agent's accreditation scheme but there is the potential for confusion and uncertainty. At least 40% of agents also appear to belong to no redress scheme.

- 4.17 There is overlap between estate agency and lettings agency and this too can cause confusion about redress mechanisms. The OEA statistics in Table 5.1 show that about three quarters of NAEA offices offer both services, although the proportion of non-NAEA agents offering letting and selling services in the OEA scheme is much smaller. In the first nine months of 2007 the OEA received 466 complaint enquiries about lettings which it could not deal with because the firm in question was only a member for selling.

Managing Leasehold Properties

- 4.18 There are two main associations of agents and landlords who manage leasehold properties in England and Wales. The Association of Residential Management Agents (ARMA) accounts for the management of approximately half of all leasehold property but probably 80-90% of those professionally managed, as a third are self managed. The Association of Retirement Housing Managers (ARHM) deals with the vast majority of leasehold properties specifically designed and designated for older people. Most of the members of ARHM are registered social landlords and private companies while ARMA's are managing agents and although it is possible that there is overlap between the organisations it has not happened in practice. Approximately 30% of ARMA's members may also belong to the RICS.
- 4.19 The precise coverage of the leasehold property market in England and Wales by these schemes is difficult to fully assess, but it does seem that only a minority is not covered by these schemes. In Scotland the equivalent organisation to ARMA is the Property Managers Association Scotland (PMAS) but the share of the market by this organisation is unknown.
- 4.20 ARMA applies the RICS codes of practice for service charges. The ARHM and RICS codes are approved by the government. Complaints against members of ARMA can be taken to the association but there is no independent redress mechanism. For those members who also belong to the RICS complainants seeking compensation will have to apply to SOS. The position is different for complainants to ARHM as its members also have to offer residents the opportunity to take their complaint to an independent redress service such as The Housing Ombudsman service. ARMA has been concerned for sometime about the need to offer independent redress to those who are not happy with the complaints raised previously with its members. It has been in discussion with the IDRS and hopes to launch an independent bespoke scheme (with ARHM) for leasehold management issues offering a choice of either adjudication or arbitration. Assuming this development comes to fruition only a small proportion of leaseholders managed professionally will still not have access to free independent redress although they will have recourse to a Leasehold Valuation Tribunal.

Information Services for Housing Transactions

- 4.21 There are a range of information services offered to people buying or selling a house or letting and renting a house. Some of these services are provided by estate agencies or letting agents. Other services such as valuation and condition surveys, HIPs and property searches are provided by specialist firms and may be marketed to sellers and buyers by other firms.
- 4.22 Valuation and physical surveys are usually accredited by the RICS although there is the increasing use of computer models when a proposed mortgage advance represents a low percentage of the house price. Redress is also complicated by the fact that the client for a valuation could be the prospective mortgagee rather than mortgagor. The RICS has two sponsored but independent redress schemes SOS for personal clients and Arbitration and Neutral Evaluation Procedures for Surveying Disputes between firms (only one has to be a member). However, a personal client of an RICS firm could also apply to the OEA scheme if the firm in question belonged to this alternative.
- 4.23 Sellers and estate agents marketing existing homes are now statutorily required to have commissioned a HIP before putting the property on the market. As noted earlier the legislation requires that all estate agents in England and Wales who market homes with such packs must belong to one of three approved independent redress schemes. Two of these redress schemes are detailed in the Appendix but relate to estate agents' activities rather than the HIP providers themselves. The percentages of the market covered by these schemes are not as yet clear. OEA has 5386 members while SOS has not published its number. PACS, the newest scheme, was subsequently withdrawn. All three schemes applied for accreditation of estate agencies under the CEAR Act.
- 4.24 The statutory requirement to belong to an approved independent redress scheme does not relate to producers of the information contained in HIPs. However, nearly all providers of HIPs and property search reports subscribe to the HIP and Searches Codes and are covered by the IPCAS administered by IDRS Ltd. IPCAS has 111 members and claims 80% of the market.

Landlords

- 4.25 There are a number of landlord associations with codes of practice and complaints procedures. The number of properties represented by these associations is not known. The Residential Landlords Association claims to have 6,000 members with 100,000 properties, the National Landlords Association between 13,000 and 14,000 members with around 130,000 properties, and the National Federation of Residential Landlords 5000 members but with stock ownership unknown. There are also the members of the Scottish associations to be added. These numbers compare with an estimated 526,000 buy to let units in 2006 and a total private rented stock of around 2,630,000. Although these numbers are incomplete it suggests that the size of these schemes amount to a very small minority of the sector.

- 4.26 The complaints procedures of the associations are very formal although the codes of practice do not necessarily require a landlord to have an internal complaints procedure and there is no requirement to publicise procedures. In one case a fee has to be paid to complain. These complaints procedures do not provide for independent arbitration and any financial redress and are not designed for this purpose. Landlords view the small claims court or a specialist tribunal as more appropriate forums to deal with such matters.
- 4.27 There is one independent redress scheme, the Housing Ombudsman, that is specifically designed to deal with complaints from landlords. The Housing Ombudsman was set up for registered social landlords but is now actively seeking membership from private landlords. It does not publish a list of members. On 31 March 2007 the service had 64 voluntary private landlords with 45,131 units. Members include the landlords, Grainger plc and Dorrington, and the managing agent, Chainbow. In addition the market rented housing stock of subsidiaries of housing associations is also included under the auspices of the Housing Ombudsman. In 2006 this latter stock amounted to 38,800 units so total membership of this scheme accounts for approximately 84,000 units in the private rented sector.
- 4.28 A relatively new innovation in the housing market is sale and rent back schemes and these are not subject to regulation and redress. These schemes have caused a number of policy concerns. There are a number of issues about these schemes that first relate to the sale of the property often at a discounted rate without necessarily an independent valuation. A second element of the transaction is that the rent back arrangement is on an assured shorthold tenancy with limited security. There have been a number of publicised instances, for example by the (South) Shields Gazette which ran a local campaign, of tenants being evicted soon after entering into such a transaction. The company in these examples is a member of a national landlords' association according to its website. The companies promoting this product are mainly set up to gain access to below market value properties for investment purposes, advertising for buy to let investors to take on the properties for renting back. Typical services offered by these companies are stopping repossession orders, rapid and confidential sales, purchase with rent back the property, and sometimes an option to buy back the property at a later stage.
- 4.29 Since the beginning of 2008 there have been some developments. There is a fledgling National Association of Sale and Rent Back (NASARB) comprising 450 sale and rent back providers, promoted by the Money Centre, a large buy to let mortgage broker. It is currently devising a codes of practice for sale and rent back for its members that it has stated will include an independent redress mechanism. In parallel the Property Buyers Association (PROBAS) has been established by apparently large sale and rent back investors mainly in the North East. Its published code of practice is a series of

principles linked to transparency, marketing standards, record keeping and advising clients to get independent advice but it does not offer independent redress.

- 4.30 In the 2008 Budget it was announced the Office of Fair Trading will lead a study of the sale and rentback market drawing on contributions from the FSA.

Caravans

- 4.31 The British Holiday & Home Parks Association (BH&HPA) and the National Caravan Council are the primary organisations representing the interests of the British parks industry. Membership of the BH&HPA is made up of the owners and managers of park home estates, touring and tenting parks, caravan holiday home parks, chalet parks and all types of self-catering accommodation. The National Caravan Council (NCC) is the trade body representing the caravan industry in the UK, with a membership of over 550 individual companies. The National Park Homes Council (NPHC) is a specialist division of the NCC and represents manufacturers of residential park homes, residential park owners and managers, and suppliers of specialist services and products to the park home industry. Together the two trade bodies operating in the park homes industry represent companies owning and managing over 900 residential parks, with some 60% (48,000) of all park home pitches in the UK, plus 90% of all residential park home manufacturers.

- 4.32 As part of these organisations' joint code of practice there is a complaints procedure only for holiday homes that broadly follows the stages of the equivalent agency schemes in the housing market. Ultimately there is an independent mediation or arbitration process, ICRS administered by IDRS. This is a relatively new arrangement since September 2007 that is free to the complainant but the old arrangements that involved payment are still referred to on the web pages. The arbitration element of the scheme, ICAS, is a simplified form of arbitration but still based on the formal submissions.

- 4.33 There is no similar code recommended by the associations for the residential park home (caravan) sector which is part of the housing market. However, if a complaint arises that cannot be resolved between the parties then the trade bodies will offer conciliation and if this fails suggest reference to ICRS. The awareness of these arrangements appears very limited as correspondence with one of the residents associations demonstrates a lack of awareness. Legislation requires all park owners to recognise residents' associations in certain circumstances. They can bring a complaint against a firm on behalf of an individual. There are also a number of national residents' associations which perform broadly the same function.

Inter-Relationships

- 4.34 The schemes presented above are partly based on activities broadly defined and partly on a professional basis. Redress schemes applicable to RICS members

potentially encompass estate agency, letting, valuation and building survey services. Originally when the RICS introduced its SOS scheme in Scotland there was an agreed memorandum of understanding between it and OEA that valuation and surveys would be the remit of SOS and selling complaints would be addressed to OEA. No such agreement applies since SOS was extended to England and Wales.

- 4.35 There are a wide range of organisations dealing with redress operating in the housing market and while some clearly specialise in specific areas dealing with a particular discipline there are other schemes that have set out their store (and ambitions) to have a much wider role. One implication is that competition has brought down the costs of these schemes to businesses.
- 4.36 This section demonstrates the complex structure of non-statutory or voluntary regulation and redress. On the other hand it can be argued that consumers need only to follow the procedures applicable to the individual firm in question and many firms advertise the logo of the scheme to which they belong. A common issue is the limited transparency of redress schemes (although new schemes may address this issue more fully). At present while the main estate agency scheme (now including letting agency) gives some details of its deliberations (see Section 7) it does not publish the names of firms which have had complaints upheld and the established letting redress scheme publishes no details of outcomes. OEA argue that simply publishing names does not take account of the size of the business and so is misleading.

5. Cost of Redress

- 5.1 Accreditation and independent redress can be logically bound together. This is seen in a number of such relationships - the RICS requires that its members belong to an independent redress scheme and sponsor SOS for customer complaints, NAEA members have to belong to OEA, NALS members have to belong to a recognised redress scheme and PCCB members are required to join IPCAS. This section aims to examine purely redress costs but as the analysis below shows it is not necessarily that simple to divorce these costs from accreditation.
- 5.2 Complaints to the OEA are free to the consumer and estate agent firms pay an annual subscription of £120 per office per year for the first discipline, eg sales, and £80 for a subsequent discipline. There is also normally a £20 administration fee unless they are members of NAEA or a large chain. HIPs only members pay an annual subscription of £100. There are no case fees. OEA refers complaints on lettings and management to The Disputes Service.
- 5.3 The SOS scheme is administered by TOSL for the RICS and is free to consumers. TOSL has a contract with the RICS for two years that is based on the assumption that there will be 500 cases at a cost of £300. The RICS is currently paying these costs on behalf of their members but from 1 January 2009 members will pay £150 per case. Non-RICS firms can join the scheme by paying an annual membership fee of £160 with a case fee of £300.
- 5.4 The Housing Ombudsman has a simple pricing formula for its service which is free to tenants based on the number of properties owned by each landlord. For 2008-09 this is £1.28 per housing unit owned and there are no additional case fees.
- 5.5 There are two elements to the Independent Consumer Redress Service offered for redress in the residential caravans sector and administered by IDRS. There is a one off membership fee of £800 for organisations to join with the scheme. ICAS, the arbitration service has a registration fee of £500 payable when an application for arbitration is made. If conciliation is chosen then the cost of the ICCS service is £400 and the parties bear their own costs of the process.
- 5.6 Search and HIP providers registered under the PCCB under the Search Code or HIP Code (or both) pay an annual subscription. The current annual subscriptions are based on numbers of staff within each firm, with a maximum fee for companies with twenty or more staff. Where a complainant brings a complaint, any redress costs are payable by the firm and not the consumer of the service. The IPCAS redress scheme

- is paid on an individual case basis. The company must pay the case fees of the IDRS administrator and the adjudicator. The company must also pay the fees for any expert help and the parties will pay their own costs of preparing their cases and attending any conference or meeting. The administration fee is £150 and the adjudicator fee is £200 (which can be reduced for early settlement).
- 5.7 The Arbitration and Neutral Evaluation Procedures for Surveying Disputes (ANEPSD) scheme set up for redress between RICS firms and other firms is also priced on an individual case fee basis. This is the only scheme designed solely for business to business disputes. The Neutral Evaluation Procedure is based on an hourly rate for the IDRS evaluator of currently £250 per hour, capped at £3000 for evaluations that include a one-day hearing and at £1,500 for those based on written submissions only. The evaluator will also charge reasonable travel and other expenses associated with any hearing.
- 5.8 The fees for the arbitration procedure are similarly calculated on an hourly basis. The arbitrator's fees for all work on the case is £220 an hour, capped at £2,200 for a documents only case and £4,400 where there is a hearing. The arbitrator will again charge reasonable travel and other expenses associated with conducting any hearing.
- 5.9 The general principle is that the losing party will pay the arbitrator's fees, costs and expenses associated with a hearing. The arbitrator can decide to divide costs on a percentage basis. The parties are jointly or separately responsible for all fees and costs.
- 5.10 Comparison of these schemes reveals considerable variation in the pricing structures. It is also difficult to make comparisons because different schemes apply different approaches to redress. Costs clearly depend on the exact dispute resolution process applied and the ombudsman services – the Housing Ombudsman, OEA and SOS schemes choose the most appropriate mechanism rather than applying a standard method. Their costs and hence prices are therefore based on an amalgam of approaches.
- 5.11 From those schemes that do charge case fees it appears that an individual complaint costs a minimum of £300. Full arbitration is the most expensive option – even a approach based on the exchange of papers is the order of £4-500 per case but can rise to £4,400 for disputes between firms. There must be some caution about these costs as some schemes are relatively new and so pricing structures are likely to change over the next few years in the light of experience.

5.12 The review also reveals that these redress schemes are administered by just four companies. OEA and the Housing Ombudsman have a large number of members. IDRS and TOSL are dispute resolution companies that offer a wide range of such services across other sectors besides housing. The Dispute Service, established in 2003, specialises in complaints and disputes arising in the private rented sector. This concentration suggests that there are economies of scale in the provision of dispute resolution services.

5.13 Redress through these schemes is free to consumer complainants.

6. Gaps, Inconsistencies and Unregulated Activities

- 6.1 A major goal of the analysis is to assess the gaps in the regulation of the housing market. This section draws together the evidence from the previous sections and other sources to identify inter-relationships between schemes, any inconsistencies that have arisen and identify gaps in regulation.
- 6.2 Many professionals in the property market are subject to statutory regulation that licences or recognises their qualifications (and hence activities) such as home inspectors, surveyors, lawyers and mortgage advisors (see Table 6.1). Estate agents under the CEAR Act will be subject to limited statutory regulation of standards but unlike other key professionals will not be required to have recognised qualifications. The CEAR Act strengthens the existing *negative* licensing regime for estate agents making it easier for enforcers to identify misconduct and remove rogue agents from the market, but does not require agents to sign up to a code of conduct. From 1 October 2008 the Act also provides a further form of regulation for estate agents via the requirement of a statutory redress scheme. Nevertheless this regulation of estate agents is less stringent than in financial and legal services and missing from the lettings agency sector.

Table 6.1 Regulation of Qualifications of Housing Professionals

Professional Service	Statutory	Voluntary
Conveyancers	*	
Mortgage Providers	*	
Chartered Surveyors	*	
Estate Agents		*
Letting/ Managing Agents		
Home Inspectors	*	
Search Providers		
Landlords		

Table 6.2 Regulation of Service Standards of Housing Professionals

Professional Service	Statutory	Voluntary
Conveyancers	*	
Mortgage Providers	*	
Chartered Surveyors	*	
Estate Agents	*	
Letting/ Managing Agents	Varies with Location and Type of Accommodation (HMO)	* Partial Coverage
Home Inspectors	*	
Search Providers		*
Landlords	Varies with Location and Type of Accommodation (HMO)	* Minimal Coverage
Residential Caravan Site		

Providers		*
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- 6.3 Anyone can set up as a lettings and management agent (including of leasehold property) although there are required standards of their management of HMOs and in areas where there are local authority licensing schemes (Scotland also has its own legislation on the repairing standard). There is therefore some statutory regulation of the management of rented property through the registration of landlords but such schemes are inconsistent and of limited scope. Voluntary accreditation through landlords' associations offers tenants some potential evidence of management standards. An overview of the regulation of standards is shown in Table 6.2 which demonstrates that letting/management agents, search providers and residential caravan site providers are the professional services that are not subject to the direct or indirect regulation of standards. The latter two do, however, offer widely available redress mechanisms.
- 6.4 Inconsistency of regulation is highlighted by the differences between the regulation of home inspectors, estate agents and letting agents.

Table 6.3 Regulation of Redress Schemes

Tenure	Statutory	Voluntary
Owner Occupied Transactions	*	
Surveys		*
Private Renting via Letting/Managing Agencies	Deposits (except Scotland)	Partial Coverage
Management of Leasehold Properties	*	*
Private Renting via Landlords	Deposits (except Scotland)	Minimal Coverage via Housing Ombudsman
Residential Caravans Estate Agency and Management		*

- 6.5 Table 6.3 summarises the balance of statutory and voluntary redress schemes across the housing market. Unlike in the owner occupied sector statutory redress by landlords and tenants in the private rented sector in England and Wales is limited to disputes about deposits. The voluntary accreditation schemes for letting agents do not cover the majority of tenants and landlords letting through agents. Voluntary

- accreditation through landlords' associations, while providing a sign of management standards, usually gives no opportunity for redress if a complaint arises. In the leasehold sector there are parallel statutory and voluntary procedures, the former via the LVT and the latter through voluntary independent redress without compensation of the professional bodies.
- 6.6 The private rented sector is the least regulated of the sectors of the housing market but there are a number of issues to address. Both landlords and tenants as clients of letting agents require access to readily available redress.
- 6.7 There are some activities subject to no statutory or voluntary regulation. Sale and rent back schemes are not subject to regulation and redress. There appear to be trade associations at the embryonic stage that may ultimately provide some voluntary regulation. The Council of Mortgage Lenders, the Citizens Advice Bureau and Shelter have proposed that these schemes should be brought under the remit of FSA regulation. It seems more logical to address the issue as regulation within the housing market as the problems that it creates relate to house purchase and landlord activities. The issues relate to the buying of the properties below market price, the provision of information about the process and the granting of shorthold assured tenancies with very limited security of tenure. In a recent report on this activity the Office of Fair Trading (2008b) has recommended statutory regulation by the Financial Services Authority to ensure greater transparency in the transaction.
- 6.8 Another gap in regulation is services provided by companies that give support to sitting tenants who are buying their home under the right to buy (RTB). Companies offering RTB services probably operate or have operated throughout the country. Some are national companies but others concentrate on specific regions and others are small local firms. Their number is likely to be in the hundreds. Many of these companies, judging by their names, are principally interested in mortgage brokering. The largest companies were set up in the mid-1990s. These companies promote themselves by a combination of themes – the difficulty of buying a home, their professional skills in ensuring that tenants receive the best financial RTB settlement, and their ability to arrange mortgages for households with low incomes or poor credit ratings. A special concern of local authorities is the use of cold calling on the doorstep as it provides the opportunity for misrepresentation and hard sales techniques.
- 6.9 Such services range from advice and help, filling out forms, through negotiating with the council over such issues as valuations, to arranging solicitors and mortgage finance. Some companies specialise only on the latter stage of this spectrum, ie arranging mortgage finance, most offer a complete package and these activities are regulated by the FSA. The other activities of these firms are unregulated. Shelter has suggested reforms to the RTB process to address some of these concerns as part

of the CLG's consultation on clarifying RTB rules. However, these activities are covered by the "Consumer Protection from Unfair Trading Regulations 2008" that came into force on 26 May 2008. They implement the Unfair Commercial Practices Directive in the UK, and introduce a general duty not to trade unfairly and seek to ensure that traders act honestly and fairly towards their customers.

- 6.10 The residential element of caravan parks has recently acquired a free redress scheme via ICRS which includes mediation and arbitration options. Unfortunately the scheme appears yet to be advertised and so there is a lack of public awareness. It also does not have an associated services standards code of practice for site providers unlike for holiday caravans and this means there is no benchmark for the ICRS scheme.

- 6.11 The analysis demonstrates substantive differences in the requirement for qualifications, the regulation of standards and of the availability of redress. The private rented sector in particular has by far the least regulation and virtually no redress available to customers.

7. Complaints in the Housing Market

- 7.1 Complaints from consumers arise at the point of transaction whether it involves a sale or a letting, or subsequently for tenants if they are unhappy with the service from the landlord or managing agents. Complaints can also arise if landlords are unhappy with tenants' behaviour and their care of their property or if they are unhappy with the way their property is managed by their agent, and there even can be disputes between two landlords. Similar complaints occur for park home occupiers. This section reviews the limited evidence available on the incidence and nature of complaints made in the housing market.
- 7.2 Many consumer complaints are not reported for a range of reasons. They may be minor or the complainants see no point as they cannot see it leading to any redress. While there are some redress schemes these are a relatively recent phenomenon and they offer only very partial coverage for tenants as the report shows. The Citizens Advice Bureaux in their 2007 report, "The Tenant's Dilemma Warning: your home is at risk if you dare complain", also note that many tenants of shorthold assured tenancies do not make formal complaints to landlords because of the fear of eviction. This means it is difficult to achieve a comprehensive picture of the scale and nature of complaints. The 2008 Law Commission report on "Encouraging Responsible Letting" also makes this point drawing on evidence from Australia. This section can therefore only give a partial perspective on the issue drawn from a number of disparate sources.
- 7.3 Statistics on complaints enquiries and complaints to the Office of Fair Trading offer an indication of the relative significance of the types of complaints. Table 7.1 suggests that it is the activities of estate agents that are the main source of consumer dissatisfaction in the owner occupied sector, accounting around three quarters of complaints to the OFT. These complaints dwarf the numbers relating to house valuation and conveyancing.

Table 7.1 Distribution of Complaints about House Purchase to the Office of Fair Trading 2006-07

	2006		2007*	
	Complaints/ Enquiries	Complaints Only	Complaints/ Enquiries	Complaints Only
Estate Agencies	3348	2808	3455	2941
House Valuation	75	57	62	54
Conveyancing	68	48	44	40
Other	956	706	703	569

* First ten months

Table 7.2 Distribution of Complaints about Renting to the Office of Fair Trading 2006-07

	2006		2007*	
	Complaints/ Enquiries	Complaints Only	Complaints/ Enquiries	Complaints Only
Letting Agencies	1417	1173	1654	1439
Property Management	429	354	479	422
Landlords	650	532	643	478
Other	337	207	213	168

* First ten months

7.4 The activities of letting agencies are the major source of complaints to the OFT in the rented sector but there are also a substantial number of complaints about property management issues and landlord behaviour. Comparison of Tables 7.1 and 7.2 shows that the number of complaints about estate agents is double that of letting agents. However, when it is taken into account that the owner occupied sector is the order of six times bigger it can be seen that in relative terms the operation of letting and management services is regarded as far unsatisfactory by consumers.

7.5 These bare statistics are also reflected in the views of consumer agencies. The consumer organisation, Which, has been a longstanding commentator on the house buying and selling processes. Its recent report, "Move It: Home Buying Reform", based on research of homebuyers in England expresses serious concerns relating to professional services in this process centre on conveyancing, the costs of surveys and a widespread distrust of estate agents (and their fees). It argues that there should be an assessment of the work being done to drive up professional standards (Which, 2007a).

7.6 Previous research published by Which in 2007 found that:

70% of estate agents frequently gave misleading information
29% think their estate agent did not keep them well informed
14% said the estate agent incorrectly described the property they wanted to buy or sell

12% said the estate agent put too much pressure on them
 9% reported they thought their estate agent acted unethically
 3% said they had to pay commission fees when they were not due.

7.7 These consumer perceptions can be compared with statistics on complaints given in the latest annual report of the OEA (Ombudsman for Estate Agents) that accounts for the vast majority of estate agents (see para 4.8). The annual report records 8472 complaint enquiries about estate agents in 2006, up from 6021 the previous year but the number of members also increased substantially (2007 statistics include lettings). Only 3421 related to its members, equivalent to just over one complaint per member branch per year. The main area of complaint is about maladministration which, as Table 7.3 indicates, has double the numbers of the next most frequent issue, fees. This pattern tends to reinforce the Which analysis except not surprisingly fees are a more prominent reason for complaint as these households are seeking financial redress.

Table 7.3 Distribution of Complaint Enquiries in 2006 and 2007 to the Ombudsman for Estate Agents

	2006	2007
Maladministration	2631	3823
Commission/Fees	1193	2031
Sales particulars	714	1089
Viewings	278	341
Buyers Finances	245	317
Communication of Offers - buyers	238	337
Conflict of Interests	195	354
Initial Valuation for Sale	188	253
Sale/Letting boards	125	188
Keys	94	177
Communication of Offers – seller	79	101
Offer of Services	42	107
Unfair Bias toward One Party	28	94
Sealed Bids	13	29
Request for Identification	11	41
Deposit		425
Management Failure		359

7.8 The Citizens Advice Bureaux reports that in 2006-07 it dealt with 91,500 private rented sector enquires, compared to 71,000 from social tenants and 43,000 from owner occupiers. These statistics confirm the OFT statistics that the major problem with regard to consumer complaints is in the private rented sector. The main issues linked to private rented sector enquiries were rents/charges, disrepair, and security issues/threatened eviction. While many complaints were about the non return of deposits disrepair is also very common, along with a range of other issues such as no receipts for rent paid/ landlord entering the premises without warning/ harassment, etc.

- 7.9 Many of these complaint enquiries may not lead to actual complaints to the landlord or the agent managing with the property. The CAB 2007 report noted earlier states that in the 2000 Survey of English Housing found that 21% of private tenants were dissatisfied with the way their landlords carried out repairs and maintenance of their property but only a quarter of these had tried to ‘enforce their rights’.
- 7.10 The evidence base on complaints is limited partly because the reporting structures are not totally transparent for example with regard to some redress schemes in the private rented sector or provide incomplete coverage or are non-existent. There is no systematic evidence available on complaints about estate agency activities in the residential caravan market sector.
- 7.11 The analysis shows that there is a high level of dissatisfaction with buying and selling properties focused especially on estate agencies. However, the OEA statistics suggest that as relatively few make a formal complaint to the organisation either this is quite a low level unhappiness, perhaps niggling concerns, or there is a lack of awareness of consumer rights or a lack of confidence in the process. Which (2007a) has criticised the levels of compensation and the OEA annual report shows that more than two thirds of awards are less than £500 and there is just over one per cent who receive more than £5,000. However, it is uncertain whether this is a factor in the level of complaints to OEA.
- 7.12 The highest level of consumer dissatisfaction is in the private rented sector. This relates both to the letting of property and to its management. The latter issue is exacerbated by the concentration of poor housing in this sector. Many of the complaints about lettings have been linked to deposits but the introduction of the recent changes to regularise practices in England have yet to impinge on these statistics. Nevertheless the evidence from the CAB suggests that dissatisfaction extends across a wide range of issues.

8. Conclusions

- 8.1 This research has set out the policy context for regulation and redress in the housing market distinguishing between statutory and voluntary schemes. The initial part of the report reviewed the extent and development of statutory regulation and redress. The main sections have focused on the extent of coverage, overlap, and gaps that exist of current non-statutory/voluntary redress schemes.
- 8.2 The analysis demonstrates that our knowledge of the sector is incomplete simply because of the lack of registration requirements for these activities. However, there is a continuing and extending process of accreditation/registration with the introduction of deposit schemes, accreditation schemes for estate agents, schemes for landlords in different guises that could it seems ultimately fill much of this statistical vacuum. The major exception is letting agents.
- 8.3 The review of regulation chronicles a patchwork of laws that have built up over decades in a piecemeal fashion that lacks a logical consistency. The variety of approach has been extended by the introduction of devolution. In recent years redress mechanisms with an accredited code of practice have been primarily used as the model of regulation. This is arguably a weaker or lower level regulation approach compared with that of financial and legal services, and it has led to apparent inconsistencies of regulatory requirements, for example between estate agents and housing inspectors. This approach has not satisfied the professional bodies. It may be argued that a one size approach does not fit all but there is a strong case for simplification and rationalisation as a medium term goal.
- 8.4 It is interesting to note that complaints associated with the selling and purchasing of housing is predominantly focused on estate agents (primarily maladministration) and they are the least regulated of the professionals who participate in this transaction. The CEAR Act bolsters the regulation of estate agents and has introduced a statutory redress scheme. It is possible to argue that recent developments have been rapid and BERR should monitor and review the impact of the changes under the Act and the other changes over the last two years. However, given that many estate agents have operated an independent voluntary redress scheme for some years and redress sums paid out have been quite low it is debatable that these reforms will substantially address the scale of dissatisfaction with the industry.
- 8.5 The highest degree of consumer dissatisfaction in the housing market is in the private rented accommodation which is also the sector that has the least regulated professional services and very limited redress opportunities. This simple correlation is perhaps unfair given also the poor standard of much of the housing in this tenure but the state of the stock is a further argument for enhancing regulation. While the

statistics presented in Section 7 predate recent legislative changes in terms of deposit schemes it is clear that consumer complaints cover a wide range of issues.

- 8.6 The complexities of regulation of private landlords mean that they can be subject to registration, licensing or accreditation schemes that can vary by location and status. The result is that the meaning of these terms has become rather stretched and difficult for a housing professional, never mind a lay person, to comprehend the layer differences. The experience of Scotland also show that a landlord registration scheme is expensive to establish and a complex task.
- 8.7 There has been a rapid and recent growth in non-statutory/voluntary redress schemes. Much of the detail of the non-statutory/voluntary schemes presented in the Appendix demonstrates a range of practices for redress procedures in terms of explicit time framework, independence of any arbiter, publicity, financial security, quality assurance, etc. but these have not been reviewed in this report. Codes of practice are almost universally used and vary in approach from basic principles to detailed standards, in the latter they have not always fully embraced the internet.
- 8.8 There is a range of redress schemes applied from the ombudsman approach through to arbitration which is much more formal and requires the submission of papers by the parties. In all cases they are free to consumer clients and small firms (except the Arbitration Procedure and the Neutral Evaluation Procedures for Surveying Disputes between firms). Necessarily these involve different costs to firms and this is an inevitable factor in the choice of schemes.
- 8.9 Voluntary accreditation/redress schemes of estate agencies and lettings agencies cover approximately two thirds and a half of their respective market in terms of numbers of agents. ARLA, the main association of letting agents, does not have a binding redress mechanism and the outcomes are not transparent. Currently complaints procedures of landlords associations do not encompass redress mechanisms. The Housing Ombudsman has a very small but significant part of the market. Independent redress is only available for the order of four per cent at most of private tenants renting directly from landlords except with regard to deposits. Landlord associations are not strictly accrediting bodies and are more lobbying organisations.
- 8.10 The vast majority of professionally managed leasehold properties are managed by members of ARMA and ARHM who are subject to management codes of practice approved by the government. Leaseholders managed by ARHM members have recourse to the Housing Ombudsman and a minority of those managed by ARMA can apply to the SOS scheme. All leaseholders have recourse to the Leasehold Valuation Tribunal. These organisations are in the process of establishing a bespoke independent redress scheme with compensation.

- 8.11 There are comprehensive regulations and independent redress procedures applicable to the delivery and marketing of HIPs but it is too early to assess how the system is working.
- 8.12 Housing services are a continuum and it is difficult to distinguish landlord activities from letting and management agencies. A landlord may undertake the letting of his/her property or use a letting agency. Estate agencies may switch to a focus on letting if the sales market is quiet and vice versa. The OEA statistics show that there are a high proportion of offices that combine estate and letting agency but only the former activity is regulated. At present the statutory redress schemes cover some of the service activities but not all. These schemes have been developed in a piecemeal way.
- 8.13 The report summarises the range of voluntary and statutory schemes that are currently applicable across the housing market with different procedures and opportunities for redress. The landscape of redress in the housing market is rapidly changing. There are some moves toward voluntary amalgamation but there are still substantive inter-linkages and overlap of the target audiences between schemes. This is likely to cause some confusion for customers although there is no evidence to demonstrate there is a problem. The system may not be a maze if you are in it but to the outsider looking in it seems unnecessarily complex with consequent fears of a lack of consumer confidence and opportunities for unscrupulous practice.
- 8.14 The current redress arrangements in the housing market have become quite diverse and better regulation principles imply there is scope for a reduction in the overall complexity or simplification. In other services sectors there is only one ombudsman. In legal services there is one ombudsman but only once the complaint has first been considered by the relevant professional organisation so this is a three stage process. This approach would add another layer of bureaucracy to existing schemes in the housing market. A more useful parallel is the Financial Ombudsman Service which offers a one stop service to settle consumer disputes with a firm. To move to such a point in the housing market would require radical surgery including the reversing of recent legislation. One approach could be to expand the role of the Housing Ombudsman to achieve this goal.
- 8.15 The Housing Ombudsman is promoting its service with independent redress to private landlords but there are also moves for the greater accreditation of private landlords. As the Scottish example shows this development may not incorporate independent redress. The extension of accreditation of private landlords provides an opportunity to extend independent redress schemes, and their potential incorporation will inevitably be raised. This in turn raises further questions about the relationship with existing statutory deposit schemes and the scale of regulation

- needed. Deposit schemes address a high proportion of historic complaints about landlords but certainly not all and issues about repairs and security of tenure are important.
- 8.16 Voluntary regulation of the residential element of caravan parks and park owners' role as estate agents has recently introduced independent redress but the scheme appears to have deficiencies in terms of weak publicity and no associated code of practice so there is no performance benchmark.
- 8.17 There are a wide range of redress mechanisms that have been driven by the service providers themselves, and as a result there are currently different approaches/processes to redress on offer within the same market sector. While there has been some dissatisfaction expressed for example about the level of payouts there is no independent evidence on what is the most satisfactory.
- 8.18 Redress schemes lack a consistent approach to transparency. Schemes in general do not publish the names of firms that have had complaints upheld against them.
- 8.19 There are economies of scale in the provision of redress.
- 8.20 Overall the analysis demonstrates that there are inconsistencies and gaps in the structure and basis of regulation and redress schemes, and there is scope for reform, extension and rationalisation. At the same time it is important to be conscious of burdens on business and as such competition between independent redress schemes stimulates innovation and contributes to lower charges.

9. Recommendations

9.1 The Better Regulation Executive defines five principles of good regulation:

- transparency
- accountability
- proportionality
- consistency
- targeted – only at cases where action is needed.

The following recommendations are guided by these principles.

9.2 The high levels of complaints about estate agents reported in Table 7.1 compared with other professional services required in a house sale is a strong argument for improving the standards of these services by further regulation. The CEAR Act requires that all estate agents are subject to a redress scheme, and as this has only just been implemented paragraph 8.4 notes there is an argument for reviewing the impact of this legislation before proceeding with further regulation. However, I remain unconvinced that the additional provisions of the Act will be sufficient. The industry itself is already trying to develop and adopt its own code of practice and industry standards board. It is recommended that government regulations be introduced to ensure that at least the principal professional in a branch has an accredited advanced qualification and thereby following a consistent model with all other service providers in the housing market. Estate agents should also be required to carry professional indemnity insurance and follow an associated code of practice.

9.3 Given the extensive dissatisfaction with the practices of letting and managing agents in the private rented sector (excluding leasehold) despite such voluntary schemes such as NALS accreditation and ARLA as a trade association it is recommended that they be regulated in the same way as estate agents. It is therefore proposed that the relevant provisions of the CEAR Act be extended to lettings and managing agents, and that government regulations are introduced to ensure that at least the principal professional in an agency branch has an accredited advanced qualification. It is probable that the regulations covering such qualifications could be the same as for estate agents. This would protect the interests of both tenants and landlords. This may require a definition of letting and managing agency based on the scale of letting activity rather than simply a contractual relationship with a landlord defined along the lines of the Accommodation Agencies Act 1953.

9.4 The sale and rent back schemes are an area that needs more regulatory attention and it is possible that this could be incorporated at least partially in regulation of letting agencies. The initial source of the problems appear to emanate further upstream, ie

the buying of the properties below market price and the provision of information about the process.

- 9.5 Private landlords can be subject to a range of regulations by local authorities or none at all depending on location. There are strong arguments for simplifying the current arrangements and extending the availability of a free redress mechanism. The Law Commission (as part of a range of proposals) has proposed self-enforced regulation whereby all landlords would be part of a professional association of landlords or an accreditation scheme or employ a letting agent belonging to recognised body. The Scottish Government requires all landlords to be registered and to meet formal criteria and is also promoting/initially funding a voluntary accreditation scheme that is administered on its behalf by landlords associations. It is recommended that voluntary accredited schemes should be encouraged via landlords associations. To ensure consumers are clear what accreditation means a scheme should meet a set of common formal criteria encompassing a code of practice with a redress scheme, regular audit arrangements, reports giving transparency and be recognised by the Office of Fair Trading.
- 9.6 There is a need to improve the transparency of redress schemes to ensure the wide publication of the names of firms that have complaints upheld against them as this will provide greater consumer accountability. Competing statutory and voluntary schemes risk losing members by taking such a proactive course but this would act as a deterrent to malpractice.
- 9.7 There is a strong case for consumer redress schemes in the housing market to be available on a universal basis. There is a balance to be struck between consumer rights and over-regulation but to be fully effective this will ideally require shorthold assured tenants to have security of tenure while they seek redress to avoid retaliatory eviction.
- 9.8 The residential caravan sector has a recently introduced a voluntary redress scheme but it should be encouraged to combine it with a formal code of practice that encompasses the estate agency role of park operators.
- 9.9 No specific recommendations for change are made for leasehold management or the marketing and delivery of HIPS. The former is well regulated and in the process of establishing a bespoke independent redress scheme. It is too early to assess the redress arrangements in the latter.
- 9.10 There is no overarching housing ombudsman in the housing market unlike in the financial and legal services but to move to such a position directly would cause

considerable and unnecessary uncertainty. There is still much to learn about the delivery of redress especially in the private rented sector. In the current state of redress in the housing market the priority for should be on simplification and filling gaps.

- 9.11 An approach involving limited upheaval is to modify the existing redress schemes to minimise overlaps of redress schemes and to offer one for different services or activities within the housing market. Initially for example there was an agreement that OEA could deal with estate agency issues while SOS would deal with surveys. Subdivision in this way is already accepted so households with a complaint about conveyancing will follow one route while households with an issue about their mortgage arrangement seek redress down a different route. Following this principle estate agency, letting and management agencies, surveys, tenants of landlords etc would have distinct schemes. This solution is recommended as it would simplify the current arrangements, ensure that there is consistency of approach within a given sector and make consumer accountability easier. Such specialism is also likely to lead to a reduction in the cost of redress. A common agreement between the various existing schemes and the OFT (and a policy for new entrants) would be required. The private sector should be encouraged to move in this direction by voluntary agreement.
- 9.12 To provide a single gateway into redress in the various sectors of the housing market it is recommended that a bespoke website is created with links to the relevant redress schemes. The different redress schemes should come together to promote a collective private funded initiative. An alternative approach would be to use a portal on a government website.

10. Selected Bibliography

The report has been written from a large number of diverse sources including the web pages of the organisations considered and correspondence with key individuals in these organisations. There are too many sources to clutter up the arguments presented by specific reference. Readers can refer to the relevant web sites of these organisations for codes of practice etc. The references directly noted in the text are listed below.

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11. Appendix

Review of Individual Schemes

The schemes are in the following order:

Estate Agencies

National Association of Estate Agents (NAEA)

Letting Agencies

Association of Residential Letting Agents (ARLA)

National Approved Letting Scheme (NALS)

National Association of Estate Agents (NAEA) Lettings Scheme

Leasehold Management

Association of Residential Managing Agents (ARMA)

Association of Retirement Housing Managers (ARHM)

Regulator/Professional Body

The Royal Institution of Chartered Surveyors (RICS)

Landlords

Residential Landlords Association (RLA)

National Federation of Residential Landlords (NFRLA)

National Landlords Association (NLA)

Holiday Caravan Parks

British Holiday and Home Parks Association and the National Caravan Council

Ombudsmen and Redress Schemes

Housing Ombudsman

Independent Consumer Redress Service (ICRS)

Independent Property Codes Adjudication Scheme (IPCAS)

Ombudsman for Estate Agents

Surveyors Ombudsman Service

Arbitration and Neutral Evaluation Procedures for Surveying Disputes (ANEPSD)

NATIONAL ASSOCIATION OF ESTATE AGENTS

The National Association of Estate Agents (NAEA) is the UK's leading professional body for estate agency. Its 10,000 members practice across all aspects of property both in the UK and overseas, including residential and commercial sales and letting, property management, business transfer, auctioneering and land. It was founded in 1962 with the goal of upholding good practice and high professional standards in UK estate agency. Today, its key roles include providing help and guidance for property professionals across a broad spectrum of disciplines.

There is a mandatory code of practice for all estate agents who have a principal, partner or director who is an NAEA member. The code of practice is the OEA code and has been in effect since 1 January 1997.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

There are up to three stages in the process – two internal stages within the firm – the latter involving a member of staff not involved in the transaction, followed by reference to the Ombudsman. This is a free service. The Ombudsman will not normally review a case until the internal complaints procedure of the member agency involved has been exhausted.

2. Explicit Internal Complaints Procedure

The code of practice requires member agencies to maintain and operate an in-house complaints procedure. Members must where practical to provide consumers with a named point of contact who assist with dealing with queries etc. In-house complaints procedures should be in writing and readily available for inspection by Ombudsman. All complaints, oral and written, should be noted in writing. The agent must deal with any properly appointed agent of the complainant.

If the complainant remains dissatisfied there must be a facility for a speedy separate and detached review of the complaint by staff not involved in the transaction. In the case of a single office agent a member of staff not directly involved in the transaction should deal with the complaint.

Following the conclusion of any internal investigation, which must not exceed 15 days following the initial complaint, the member agency is obliged to make a written statement expressing their final view, and including any offer made. This statement must be copied to the complainant and the Ombudsman. The letter must also tell the complainant how the matter can be referred to the Ombudsman within six months.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

All written complaints must be acknowledged within three working days, and a proper branch investigation promptly undertaken. A formal written outcome of the branch investigation must be sent to the complainant within 21 days. If longer is needed, the complainant should be told in writing, with an explanation, and given an indication of timescale. The outcome of the investigation must be sent to the complainant within such stated timescale.

The Ombudsman then decides on the procedure, which could be reconciliation, mediation or a full review and depending on the case, proceeding may take up to 3 months from date application is signed.

The OEA website informs people that if the member agent does not deal with a complaint within eight weeks of receiving it in writing, then the complainant may take it direct to the Ombudsman.

4. Services Standards Code

The code of practice relating to sales of property which all member agents have to comply with was approved in 2005 by the OFT Consumer Codes Approval Scheme.

5. Sector Coverage of Scheme

The scheme is mandatory for branches run by NAEA principals, partners and directors offering an estate or letting agency service. It has 2,869 members covering 4,609 branches operating as independent estate agents (as of 3/01/08). At the same date there were over 2,300 NAEA offices acting as a letting agency, about three quarters are offices that deal with sales as well.

6. Scale of Compensation Available

The Ombudsman can recommend member agents pay compensation of up to £25,000 in any one case. If more than this sum is demanded by the complainant he/she needs to apply to the courts.

7. Redress and Disciplinary Penalties for Contravention

The code of practice requires that a firm cooperates with any investigations of the Ombudsman, comply with any award made by the Ombudsman and accepted by complainant, and pay the amount of any such award with the period stipulated.

Cases of non-compliance are dealt with by the OEA Council who can issue an informal warning, formal warning, a notice of dismissal from OEA Ltd in writing (subject to an appeal).

A breach of NAEA's code of conduct (not the code of practice) constitutes a disciplinary offence. Punishments include caution, reprimand, fine, reclassification

of membership, suspension and expulsion. Disciplinary action can be initiated by a written complaint or the executive committee. All investigations are undertaken by its compliance officer.

8. Independence of Arbitrator

The OEA is a full member of the British and Irish Ombudsman Association. More details are provided in the separate review of the OEA.

9. Financial Security of Scheme

Scheme is funded by members. Member agents must have indemnity insurance.

10. Publicity and Information on Scheme

The OEA scheme requires that all members must display the OEA logo on window and marketing literature and on letter heads. Copies of a leaflet entitled, “A Consumer Guide” must be displayed in all offices and there must also be available, free of charge, copies of the OEA code of practice to give to customers on request. A notice to this effect must be displayed with the Consumer Guides.

11. Consumer Perceptions

See separate entry for OEA. The OEA monitors members by undertaking compliance surveys.

12. Quality Assurance Procedures

The National Federation of Property Professionals (NAEA) organises its own qualifications in estate agency and letting. Under the OFT’s Approval Scheme, the OEA is obliged to review its Code of Practice on a regular basis by involving all stakeholders such as National Association of Estate agents (NAEA), RICS, the OFT and other consumer groups.

ASSOCIATION OF RESIDENTIAL LETTINGS AGENTS

The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. A primary motivating factor was to promote standards in the residential lettings market.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

There are up to three stages in the process – internal firm’s procedures, followed by reference to ARLA, and then potentially arbitration/mediation but there is no reference to the payment of costs of the last stage.

Once internal procedures are exhausted and there is still an impasse the complainant must be informed of the contact details of ARLA if they wish to take the complaint further. These rights are not required to be advertised in an office and only that the complainant is informed at the unsuccessful completion of the process.

There is no reference to complaints procedures on the ARLA website under ‘information for tenants’ or ‘information for landlords’ except with regard to the tenancy deposit scheme. However, the website does state that the existence of the association’s byelaws that deal with complaints is cited as one reason for choosing an ARLA agent.

2. Explicit internal Complaints Procedure

A member has to have an in-house complaints procedure appropriate to its size and structure. Any person wishing to make a formal written complaint about the standards of the service received must be made aware in writing of these procedures upon request but there is no requirement to advertise these procedures.

The code of practice which is also on the web page states that a complaint cannot be considered until ARLA is satisfied that the complainant has exhausted a member firm’s own internal complaints procedures and if it is not subject of legal action. The complaints procedure is not explained in the code of practice.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

The code of practice states that that member firms must comply promptly and fully with any investigation of a dispute carried out by ARLA or its appointed adjudicator, expert or arbitrator. There are no formal timescales set out for this procedure.

4. Services Standards Code

The code of practice applies to residential letting and property management services of ARLA’s members. It is, however, subject to one caveat that the code applies, “within the limitations or restrictions imposed on their operating standards by their

employment by a non-ARLA firm, they apply to an Individual Member of the Association”. The code covers data protection, money laundering, market appraisal, terms of business with clients, the termination of instructions, marketing, viewings, letting offers, taking up of references of potential tenants, rent collection, management, terminancy of tenancies, deposits, dealing with clients money and complaints. The procedures set out the principles and practice required in the provision of services to landlords as clients and tenants/potential tenants as customers.

5. Sector Coverage of Scheme

ARLA has 1,800 member offices throughout the UK including large multi-branch national companies as well as the smaller single office practices. Membership is achieved only by agents who demonstrate that they have a thorough knowledge of their profession and that they conduct their business according to current best management practice.

6. Scale of Compensation Available

There is no detail provided in the code of practice. ARLA can only initiate a claim under the association’s client money protection bonding scheme.

7. Redress and Disciplinary Penalties for Contravention

Member firms are required to comply with the decision of ARLA (subject to appeal) but this is not as strong a sanction as it seems as decisions on compensation can be recommendations. Where necessary sanctions can be imposed on a member. Outcomes of the ARLA adjudication process include a written apology, caution against a repeat of the problem, refund all or some of the fees or charges, impose a financial penalty or fine (scale not published), recommend the firm change its procedures, undertake activities to redress or rectify the problem, more appropriate ways of dealing with the dispute such as mediation or arbitration, suspend or expel the member.

8. Independence of Redress

In some instances ARLA will recommend that complaints should go to mediation or arbitration so this represents a potential third step in the complaints process. No report of number and outcome of complaints on website.

9. Financial Security of Scheme

All members are required to have professional indemnity insurance cover. In addition they are covered by a bonding scheme which provides financial protection for client monies which have been misappropriated.

10. Publicity and Information on Scheme

The ARLA complaints procedures are not freely available but are made available only as required.

11. Consumer Perceptions

The annual report is not on the website so numbers of complaints and consumer satisfaction about redress procedures are not readily available.

12. Quality assurance procedures

ARLA member firms are required to employ a minimum of at least one member of staff, in any office, who holds a suitable industry qualification, recognised by the association. The National Federation of Property Professionals organises its own Diplomas. It also keeps its members up to date with changes in legislation and provides wide-ranging training and guidance to help members understand and interpret all aspects of letting and managing a property.

The code of practice states that member firms must take reasonable steps to ensure that all relevant member firm staff are conversant with all aspects of the code and ARLA'S byelaws and have an up to date working knowledge of their legal responsibilities and obligations in dealing with clients, applicants and tenants, appropriate to their job role. It also states that a member firm should offer equality of professional service to any person.

National Approved Letting Scheme (NALS)

NALS is an accreditation scheme for letting and management agents which agree to meet defined standards of customer service, together with having in place the necessary insurance to protect clients' money plus a complaints procedure offering independent redress. Members include social landlords. NALS has two routes to accreditation. First through the affiliated route – where a principal, partner or director is a member of ARLA, RICS or NAEA and second through the non-affiliated route.

Criteria for Judging Regulation/Redress Schemes

1. Ease of Application for Redress

The redress routes through which complainants can go to resolve their complaints varies. For most members the procedure would lead to the OEA scheme for letting agents (since January 2008). The complaints procedure for RICS firms could lead to the final stage of a complaint being handled by SOS.

2. Explicit internal Complaints Procedure

NALS accredited firms must have, as a requirement of their accreditation a written customer complaints procedure available on request to complainants and also have an independent redress facility. There are up to three stages in the process - two internal stages within the firm - the latter involving a member of staff not involved in the transaction, followed by reference to final adjudication.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

The timescale is the same as NAEA. All written complaints must be acknowledged within three working days, and a proper branch investigation promptly undertaken. A formal written outcome of the branch investigation must be sent to the complainant within 21 days. If longer is needed, the complainant should be told in writing, with an explanation, and given an indication of timescale. The outcome of the investigation must be sent to the complainant within such timescale.

NALS has specifically agreed with the OEA that where possible complaints against NALS firms should be dealt with through OEA's "Early Resolution Option" without complaints having to go to a full review. This will potential save time and effort for the consumer and agent.

4. Services Standards Code

NALS firms operate to a set of service standards underpinned by the OEA lettings code.

5. Sector Coverage of scheme

NALS has approximately 1,600 offices accredited of which half also belong to an affiliated organisation and half are non-affiliated.

6. Scale of Compensation Available

Compensation depends on the ultimate redress route, either OEA or SOS.

7. Redress and Disciplinary Penalties for Contravention

The code of practice requires that a firm cooperates with any investigations of the ombudsman, comply with any award made by the ombudsman and accepted by complainant, and pay the amount of any such award within the period stipulated.

Where cases of non-compliance are dealt with by the OEA Council it can issue an informal warning, formal warning, a notice of dismissal from OEA Ltd in writing (subject to an appeal).

The OEA has agreed with NALS that there will be feedback on complaint numbers, type of complaint and firms' details on a regular basis. The NALS Board can then consider whether action is needed in relation to a firm's continuing accreditation by the Scheme. NALS reserves the right to terminate the accreditation of any agent failing to meet the NALS service standards which encompass complaints handling.

8. Independence of Arbitrator

It depends on the arbitration route, OEA or SOS.

9. Financial Security of Scheme

Scheme is funded by accredited agents who have Professional Indemnity Insurance and Client Money Protection cover. NALS agents contribute to a bonding scheme which provides financial protection for client monies which have been misappropriated or ARLA entry.

10. Scheme must be widely published and information freely available

NALS firms bound by OEA rules in relation to the promotion of their scheme. The OEA scheme requires that all members must display the OEA logo on window and marketing literature and on letter heads. Copies of a leaflet entitled, "A Consumer Guide" must be displayed in all offices and there must also be available, free of charge, copies of the OEA code of practice to give to customers on request. A notice to this effect must be displayed with the Consumer Guides.

11. Consumer Perceptions

See OEA Entry. As part of a regular quality assurance audit NALS firms also submit details of a selection of their landlords and tenants who are then sent a questionnaire devised to probe if the firm is complying with the NALS service standards. The last audit, carried out in conjunction with Nottingham Trent University, was published in April 2007 and encompassed feedback from c1,000 landlords and tenants.

12. Quality Assurance Procedures

Under the OFT's Approval Scheme, the OEA is obliged to review its Code of Practice on a regular basis by involving all stakeholders such as National Association of Estate agents (NAEA), RICS, the OFT and other consumer groups. NALS carry out a Customer Service Audit of a random selection of its accredited firms in order to ensure compliance with the NALS service standards.

NATIONAL ASSOCIATION OF ESTATE AGENTS (NAEA) SCHEME FOR LETTING AGENTS

The National Association of Estate Agents (NAEA) is the UK's leading professional body for estate agency. Its 10,000 members practice across all aspects of property both in the UK and overseas, including residential and commercial sales and letting, property management, business transfer, auctioneering and land. It was founded in 1962 with the goal of upholding good practice and high professional standards in UK estate agency. Today, its key roles include providing help and guidance for property professionals across a broad spectrum of disciplines.

There is a mandatory code of practice for all letting and management agents who have a principal, partner or director who is an NAEA member. The code of practice has been in effect since April 2006. The code of practice was also approved by ARLA, and much of it is the same as its own code. It has yet to be accredited by the OFT Consumer Codes Approval scheme. The OEA subcontracts mediation work to The Dispute Service (TDS), an impartial redress company.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

There are up to three stages in the process – two internal stages within the firm – the latter involving a member of staff not involved in the transaction, followed by reference to the Ombudsman. This is a free service.

The OEA works in partnership with TDS to resolve complaints involving lettings and property management disputes. Complaints are handled using the normal rules of the OEA Scheme, but the cases are examined by the TDS.

2. Explicit Internal Complaints Procedure

Members must where practical provide consumers with a named point of contact who assist with dealing with queries etc. In-house complaints procedures should be in writing and readily available for inspection by Ombudsman. All complaints, oral and written, should be noted in writing. The agent must deal with any properly appointed agent of the complainant.

If the complainant remains dissatisfied there must be a facility for a speedy separate and detached review of the complaint by staff not involved in the transaction. In the case of a single office agent a member of staff not directly involved in the transaction should deal with the complaint.

Following the conclusion of this review a written statement detailing the firm's final view and any offer must be sent to the complainant. The letter must also tell the complainant how the matter can be referred to the Ombudsman within six months.

3. Reasonable and Explicit timescale for addressing a Complaint and any Potential Redress

All written complaints must be acknowledged within three working days , and a proper branch investigation promptly undertaken. A formal written outcome of the branch investigation must be sent to the complainant within 21 days. If longer is needed, the complainant should be told in writing, with an explanation, and given an indication of timescale. The outcome of the investigation must be sent to the complainant within such timescale.

The OEA website informs people that if the member agent does not deal with a complaint within eight weeks of receiving it in writing, then the complainant may take it direct to the Ombudsman.

4. Services Standards Code

The procedures set out the principles and practice required in the provision of services to landlords as clients and tenants/potential tenants as customers and is the same as ARLA's except for the complaints procedure.

5. Sector Coverage of Scheme

The scheme is mandatory for agents run by NAEA principals, partners and directors offering a lettings service. The OEA started registering letting agents from April 2006, with complaints accepted from June of that year. For the lettings scheme 1700 members had been signed up by the end of 2006 and 3572 branches were covered by November 2007. In the first nine months of 2007 the Ombudsman received 466 complaints about lettings which could not deal with because the firm in question was only a member for selling.

6. Scale of Compensation Available

The Ombudsman can recommend member agents pay compensation of up to £25,000 in any one case. If more than this sum need to go to court.

7. Redress and Disciplinary Penalties for Contravention

The code of practice requires that a firm cooperates with any investigations of the Ombudsman, comply with any award made by the Ombudsman and accepted by complainant, and pay the amount of any such award within the period stipulated.

Cases of non-compliance are dealt with by the OEA Council who can issue an informal warning, formal warning, a notice of dismissal from OEA Ltd in writing (subject to an appeal).

A breach of NAEA's code of conduct (not the code of practice) constitutes a disciplinary offence. Punishments include caution, reprimand, fine, reclassification of membership, suspension and expulsion. Disciplinary action can be initiated by a

written complaint or the executive committee. All investigations are undertaken by its compliance officer.

8. Independence of Arbitrator

The OEA is a full member of the British and Irish Ombudsman Association. More details are provided in the separate review of the OEA.

9. Financial Security of Scheme

Scheme is funded by members. Member agents must have indemnity insurance.

10. Publicity and Information on Scheme

The OEA scheme requires that all members must display the OEA logo on window and marketing literature and on letter heads. Copies of a leaflet entitled, “A Consumer Guide” must be displayed in all offices and there must also be available, free of charge, copies of the OEA code of practice to give to customers on request. A notice to this effect must be displayed with the Consumer Guides.

11. Consumer Perceptions

See the separate entry for the OEA. The OEA undertakes compliance surveys but these so far apply only to selling agents.

12. Quality Assurance Procedures

The NAEA code of practice requires that all staff are fully conversant with all its aspects and that staff have a good working knowledge of the law of agency, law of contract and all relevant legislation. Staff are expected to provide a equally high professional service to all people.

Under the OFT’s Approval Scheme, the OEA is obliged to review its Code of Practice on a regular basis. By involving all stakeholders such as National Association of Estate agents (NAEA), RICS, the OFT and other consumer groups

ASSOCIATION OF RESIDENTIAL MANAGEMENT AGENTS (ARMA)

The association operates only England and Wales. It was founded in 1991 and is an association of agents that manage residential leasehold blocks of flats. ARMA accounts for the management of approximately half of all leasehold property and 80-90% of properties professionally managed. It is currently rethinking its complaint and redress procedures but the analysis is of the present scheme.

Criteria for Judging Regulation/Redress Scheme

1. Ease of application for redress

The ARMA web site states:

“If you have a problem with a member of ARMA over compliance with the Royal Institution of Chartered Surveyors' Code of Practice relating to service charges you can call ARMA on 020 7978 2607 for advice, however you will be expected to have been through the full internal complaints procedure of the member first and, where appropriate, raised the issue(s) with any outside freeholder or the directors of the residents management company.

Complaints against members are taken very seriously. A copy of the formal Complaints Procedure is available upon receipt of a written request (email, fax or letter) and this is accompanied by a questionnaire, Form 1A. However, ARMA often finds that many issues can be dealt with without the need to go through the formal complaints process and encourages potential complainants to discuss such issues with the Secretariat first to see if an informal solution can be found.

Freeholders, managing agents and lessees have legal duties and obligations to each other. The ARMA complaints procedure is not intended to be a substitute for any other action. All existing channels of communication and negotiation between freeholder, agent and lessee must be maintained. We recommend that, wherever possible, notifications, complaints and responses are put in writing and that written records are kept of telephone calls.

ARMA is unable to comment on matters concerning residential lettings or where the complaint is based on a variance of opinion concerning the interpretation of a lease or management policy or where litigation is taking place. Neither does ARMA act as an arbitrator.

ARMA is not empowered to consider complaints against firms that are not members nor can it deal with issues that are more properly matters for the Leasehold Valuation Tribunals or the Courts.”

There are in effect three stages to the complaints procedure. First, the internal firms' procedures must be exhausted. The next step is for the ARMA secretariat to broker an agreement between the two parties. ARMA sees its role as working with the complainants and members to resolve issues rather than purely investigating them in terms of compliance with the recognised codes of practice. Complaints are ultimately referred to the Practice Committee if they cannot be resolved in this way.

2. Explicit Internal Complaints Procedure

The association seeks to solve complaints informally.

3. Explicit timescale for addressing a Complaint and any Potential Redress

Members are initially given 7 working days to start resolving the issues with the complainant and if the complainant reports no contact or an unsatisfactory response then a further 7 working days is given to the member before consideration is given to referring the matter to the Practice Committee.

4. Services Standards Code

It does not have its own specific standards. Instead all members endorse, accept and undertake to comply with the current code of practice relating to service charges published by the Royal Institution of Chartered Surveyors under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

5. Sector Coverage of Scheme

ARMA has over 180 corporate members managing in excess of 750,000 units in an estimated 30,000 blocks of flats or estates (at least 60% of which are lessee-controlled properties). The Association's founding principal aims are to represent the interests of and improve standards for lessees, resident management companies and investor freeholders. It is estimated to account for half of all leasehold properties.

6. Scale of Compensation Available

ARMA's complaint procedure does not allow for compensation awards at present but see below about an independent redress scheme.

7. Redress and Disciplinary Penalties for Contravention

All members agree to adopt and abide by ARMA's principal objectives and undertake to comply with the codes of practice issued by the Association and RICS. The Articles of Association state that its Council has the power to:

“Discipline, fine, suspend and expel Members who are in breach of any rules of the Association or whose conduct, is in the opinion of the Council, unbecoming to a member or has brought the Association into disrepute” – the rules include compliance with the RICS Code.

8. Independence of Redress

The complaints procedure explicitly says ARMA does not offer a mediation, arbitration or ombudsman scheme so there is no formal independent redress facility. The annual report details the number of complaints. There were 180 complaints

reported in the annual report for 2005-06, equivalent to 0.00024% of all units managed by members. These are composed as follows:

	%
Service Charges	25
'Promises' not delivered	48
Handover	14
No or lack of communication	3
Miscellaneous (including letting issues)	10

9. Financial Security of Scheme

The administration of the scheme is by the Secretariat and is funded by members of ARMA. The partial informality of the scheme means that it is difficult to identify precise costs.

10. Publication and Information on Scheme

The scheme's details are published on the web site but there appears no necessity for firms to advertise it in their offices.

11. Consumer Perceptions

No survey of consumers' perceptions is recorded in the annual report

12. Quality Assurance Procedures

Members are not required to meet explicit quality assurance procedures although ARMA issues a wide number of guidance notes on for example the recognition and formation of residents' associations, HIPs, housing management, etc. ARMA's first ever guidance note (January 2000) to its members was on the subject of "Complaint handling in-house". This note was updated and re-issued in Summer 2005.

ASSOCIATION OF RETIREMENT HOUSING MANAGERS (ARHM)

ARHM was founded in June 1991. Members are organisations which manage leasehold retirement and sheltered housing. This includes private companies, registered social landlords and other organisations, subject to the discretion of the executive committee. There are also affiliated members. The overriding objective of the ARHM is to promote high standards of practice and ethics in the management of retirement housing. To this end, the ARHM has published a code of practice setting out the standards required of its members. Both sets of members have to comply with its code of practice. The aim of ARHM's complaint procedure and the requirement to offer an independent redress scheme (as well as via the LVT) is to allow leaseholder access to redress for matters outside the jurisdiction of LVTs and a source of redress which is more consumer friendly and free to access.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

The association will normally only consider a complaint if it has already been dealt with through the complaints procedure of the ARHM member. Chapter 13 of the ARHM's code sets out criteria which it expects members to use. The focus in dealing with complaints is its code of practice. Any complaint you make should preferably be in writing and can be made by letter, fax or e mail. There is a form available but it is not compulsory. A complaint can also be made by telephone. A complaint it needs to be specific about the parts of the code of practice that have been breached. All ARHM members agree to make a copy of the code available to residents at all retirement schemes they manage. A copy can also be requested directly from ARHM by telephone.

ARHM will not normally consider a complaint if it is currently being dealt with or has been dealt with by another relevant dispute procedure e.g. AIMS, a Leasehold Valuation Tribunal, the Housing Ombudsman Service.

Depending upon the nature of the complaint ARHM may decide it should be referred to an alternative dispute resolution procedure such as an ombudsman, mediation or tribunal. A complainant has an opportunity at this point to be consulted on the most appropriate approach.

ARHM members must offer residents on a development by development basis the opportunity to join a recognised ombudsman service. At present there is only one such service exists – The Housing Ombudsman service.

2. Explicit Internal Complaints Procedure

All members are required to have a fair complaints procedure and this should be used before turning to the ARHM.

3. Explicit timescale for addressing a Complaint and any Potential Redress

Each stage of the complaints procedure set out below has an explicit and expeditious timetable:

Stage 1

A valid complaint received by ARHM will be copied to the member with a request for a full response to the ARHM within 21 days. If a response is received from the ARHM member that the matter has been resolved, or actions have been or will be taken to satisfy the complainant, the ARHM will write to the complainant with copy correspondence and ask if you are satisfied with the ARHM member's reply. The complainant should reply within 21 days. If no reply is received within 21 days, the complaint will be closed.

Stage 2

If the complainant is still not satisfied, the complaint will be referred to the Board of the ARHM. At least two members of the Standards Committee will consider the complaint within 21 days unless there are exceptional circumstances. No member of the Board who is employed or has been employed by a member which is the subject of a complaint, shall be involved in decisions about that complaint.

ARHM will advise the complainant of what it proposes to do and provide a timescale if a full response will take longer. If there are several exchanges of correspondence about the complaint target dates for final submissions may be given, and no papers will be accepted within 7 days of the meeting of the Board to deal with the complaint.

The ARHM will then write to the complainant and the ARHM member with its decision.

4. Services Standards Code

The code of practice was approved in 2005 by the government under S87 of the Leasehold Reform, Housing and Urban Development Act 1993. This section allows the Secretary of State to approve codes designed to promote desirable practices in relation to any matters concerned with the management of residential property. The code of practice contains 126 legal requirements arising and 20 sets of regulations that managers of private retirement housing must follow. In addition there are a further 284 recommendations of good practice. The Housing Corporation recommends all housing associations follow the code for the management of leasehold schemes for the elderly. This code applies to England. A Welsh version has been approved by the National Assembly and will be launched shortly.

5. Sector Coverage of scheme

ARHM represents most of the managers of private retirement housing in England and Wales, including registered social landlords and private companies. It represents 59 organisations that between them manage some 96,000 out of the total 105,000 retirement properties in the UK

6. Scale of Compensation Available

The aim of the ARHM is to improve standards of management. The approach is to ask the member to put matters right. This includes changing their policy or practice to prevent a similar situation recurring. It does not have the capacity to award compensation to residents whose complaints are well founded. To achieve compensation the complaint has to be channelled to an ombudsman service.

7. Redress and Disciplinary Penalties for Contravention

ARHM does have the ability when appropriate to discipline members and as a last resort to expel them from the association.

8. Independence of Redress

Besides the complaints procedures of ARHM members as noted earlier must offer residents the opportunity to take their complaint to an independent redress service which at present is to The Housing Ombudsman service. The ARHM is in discussion with IDRS to offer an alternative scheme which its members could use in addition to the Housing Ombudsman. It is planned to launch this scheme in Spring 2008 and it will offer the possibility of compensation.

9. Financial Security of Scheme

No compensation is available but members must show proof of having professional indemnity insurance cover.

10. Scheme must be widely published and information freely available

Unknown

11. Consumer Perceptions

Unknown

12. Quality Assurance Procedures

As part of the code of practice members have to accept compliance checks in the form of visits and inspection of documents.

ROYAL INSTITUTION OF CHARTERED SURVEYORS (RICS)

The Royal Institution of Chartered Surveyors (RICS) is the leading source of professional advice on land, property, construction matters. In 1998 the RICS introduced a mandatory complaints handling procedure (CHP) for members. The basic principles of the CHP are that members must investigate complaints thoroughly and complainants must have access to an independent redress mechanism that is approved by the RICS. Financial redress is via one of these mechanisms but the RICS also has a complaints procedure. The organisation has recently overhauled the regulation of its members.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

Complainants have first to have been through a firm's internal complaints handling procedure and still wish to bring your complaint to the attention of RICS. The RICS will only consider those matters falling within its code of conduct, for example:

- failure to have or use a complaints handling procedure
- failure to answer correspondence
- failure to disclose a conflict of interest
- misuse of clients' money
- incompetence
- allegation or conviction of a criminal offence

The RICS does not deal with complaints about negligence. A complaint is only formally recognised when received in writing and there is an online form available

2. Explicit Internal Complaints Procedure

The RICS's code of conduct requires that a firm has a complaints handling procedure and that a copy of it is available on request.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

No formal timescale published

4. Services Standards Code

In June 2007 RICS launched a principles-based regulatory regime. RICS Regulation is responsible for ensuring that RICS members and firms meet the requirements of RICS' Rules of Conduct. These rules define the professional, ethical and business standards which are expected of RICS members and firms and are in two parts, providing a clear distinction between obligations for individual members and conduct of business requirements for firms (dispensing with a former 56 page rule

book). The rules take the form of a short, simple set of principles prescribing how members must conduct themselves in their personal and professional lives.

5. Sector Coverage of scheme

It applies to all RICS members but statistics are unavailable broken down by specialist activity.

6. Scale of Compensation Available

None

7. Redress and Disciplinary Penalties for Contravention

A member can face disciplinary action and be fined. If the breach of conduct is deemed sufficiently serious it will be referred to the RICS Conduct Committee who will consider the case at a public panel hearing. If the panel finds against a surveyor, it can impose a range of penalties including a reprimand, a fine and expulsion.

8. Independence of Arbitrator

RICS Regulation is administered by a Regulatory Board which is chaired by a non-member of RICS to demonstrate that RICS' regulation of its members is independent and at arm's length from the interests of RICS members.

9. Financial Security of Scheme

Not applicable

10. Publicity and Information on Scheme

Complaints procedure and form are available on the RICS web page. There appear to be no requirements to publicise the scheme to clients.

11. Consumer Perceptions

Unknown

12. Quality Assurance Procedures

RICS Regulation monitors, trains and assists members and firms to comply with rules, regulations and ethical standards

NATIONAL FEDERATION OF RESIDENTIAL LANDLORDS (NFRL)

The National Federation of Residential Landlords (NFRL) has recently been amalgamated with the Southern Private Landlords Association to become a national membership based organisation. It publishes a quarterly magazine, 'Successful Renting', that is sent free to members. The NFRL has over 5,000 members and approximately 2,500 affiliates, making a total of 7,500 in membership/affiliation. NFRL does not currently have details of the numbers of properties owned by its members.

Criteria for Judging Regulation/Redress Schemes

1. Ease of Application for Redress

Complaints against a member in their capacity as a letting or estate agent are directed to the relevant professional body or the local trading standards department.

Complaints are investigated from by tenants and members against full members that allege non-compliance with the code of practice or the rules of the association.

An administrative fee of £50 is required from each claimant. Complaints have to be typed. A summary of 200 words maximum should set out the complaint and which clauses of the rules of the association or code of practice.

2. Explicit Internal Complaints Procedure

The code of practice requires members have clear procedures for tenants complaints. If staff are employed the procedure is required to ensure complaints are forwarded to a responsible principal for quick resolution. Members are required to make their procedures commonly known with response times for the various stages. The procedures should provide a facility for a complaint to be made directly to the landlord. The code notes that endeavours should be made to resolve disputes by informal means before resorting to formal procedures.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

The code of practice notes that internal procedures must be speedy and have response times but these are not explicit.

Receipt of a complaint to the association and its validity is to be acknowledged within seven days.

The complaint summary is then passed to the member with a set time period to respond (period determined by chief executive). The member's response is ultimately assessed by the board of the association. There is a Complaints Sub-Committee consisting of landlords with suitable backgrounds (namely, one is a JP, another a solicitor and a third a landlord) who will deal with the complaint and make recommendations to the Board, who make the ultimate decision.

4. Services Standards Code

The code of practice covers general business conduct, dealing with tenants, accounts, tenancy agreements, procedures for management.

5. Sector Coverage of Scheme

5000 members

6. Scale of Compensation Available

The scheme does not explicitly offer the potential for compensation.

7. Redress and Disciplinary Penalties for Contravention

A member is expelled if there is no written response to a complaint. The board also has absolute discretion of actions if a complaint is found proven.

8. Independence of Redress

No independent arbitrator.

9. Financial Security of Scheme

Unknown

10. Publicity and Information on Scheme

Information is available from code of practice.

11. Consumer Perceptions

Unknown

12. Quality Assurance Procedures

The association offers short training courses and brief information notes on specific issues. However, there is no reference to redress schemes on the list on the web site.

NATIONAL LANDLORDS ASSOCIATION (NLA)

The National Landlords Association (NLA) was founded in 1973 as the Small Landlords Association, now the National Landlords Association (NLA) as a lobbying organisation and this remains a core activity. Services for member landlords also included a telephone advice line and a bi-monthly newsletter. In June 2003 the Small Landlords Association was converted into a company limited by guarantee and retitled the National Landlords Association. The NLA has between 13,000 and 14,000 subscribing members and is the largest landlord association. Members have an average of 9.5 properties. It now employs a team of salaried professionals to perform core tasks. The NLA journal, UK Landlord, is published six times a year. Five of the largest buy-to-let lenders (Birmingham Midshires, Paragon Mortgages Ltd, Mortgage Express, Mortgage Trust and Bristol & West) are corporate members of the NLA and provide a forum for co-operating on trade and regulatory issues of mutual concern. Over 80 Local Authorities are also members of the NLA. The NLA sponsors an accredited tenancy deposit protection scheme which is administered by Hamilton Fraser Insurance Solutions plc.

Criteria for Judging Regulation/Redress Schemes

1. Ease of Application for Redress

The NLA will require a complaint against a member to be made in writing, with the name, contact details and, where appropriate, the position of the complainant, included. E-mail is acceptable.

The NLA appoints a director to investigate the complaint. This person will first attempt to resolve the issue by mediation. If mediation fails, a report with a recommendation will be submitted to the Board of the NLA, which will consider it at the earliest reasonable opportunity. If the Board of the NLA accepts a recommendation that the member concerned is in breach of the code of practice, the Head of Finance & Administration will write to the member concerned informing them of the Board's conclusion.

2. Explicit Internal Complaints Procedure

This is not covered by the NLA code of practice.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

Under arrangements made by the Board of the NLA, the complaint will be investigated with a view to ensuring it is relevant, appropriate and presents a possible breach of the code of practice. This will include checking that the landlord's membership of the NLA was valid at the time of the alleged breach of the code of practice. If the complaint is considered inappropriate the NLA will inform the complainant in writing of the reason for rejection. If a complaint is considered valid, the NLA will acknowledge receipt of the complaint and advise the complainant that it will be investigated. No timescale is provided for this stage or subsequent stages.

4. Services Standards Code

The NLA code of practice provides a brief statement of standards that member landlords are expected to observe in connection with the letting of their residential properties. The code seeks to promote good relations between landlord and tenant by ensuring a good standard of service to tenants. Members of the NLA, whether they manage their lettings themselves or do so through an agent or any third party, are expected to observe the code of practice. The code of practice covers creating and maintaining a tenancy, deposits, references for tenants and complaints.

5. Sector Coverage of scheme

There are between 13,000 and 14,000 individual members countrywide living or carrying on their business as landlords in England, Scotland and Wales, and some in Northern Ireland.

6. Scale of Compensation Available

No compensation is available from the association and if a complaint is upheld the NLA can only suggest compensation and this could be very arbitrary.

7. Redress and Disciplinary Penalties for Contravention

Where there is a breach of the code of practice the Board may decide that the breach is of sufficient gravity to warrant exclusion of that member from membership of the NLA. The member will then be offered the opportunity to make written representations within one month as to why the Board's decision should not be confirmed. Taking into account any written representations, the Board will reaffirm its decision or change it. A member excluded from membership under this procedure will be offered an opportunity to appeal to an independent adjudicator.

8. Independence of Redress

There is no true independent arbitration mechanism as the NLA is viewed as the mediator. The complaints procedure is primarily a potential precursor to disciplinary action. The association uses the Chartered Institute of Arbitration (CI Arb) for cases that required independent arbitration.

9. Financial Security of Scheme

The annual subscription of the NLA is £70 so there is not the resources to offer compensation from the association.

10. Publicity and Information on Scheme

The scheme is set out on the NLA website but the tenant may be unaware of membership. There is no requirement in the code of practice to inform a tenant of their rights in this respect.

11. Consumer Perceptions

These are unknown but the principal reason for complaints has been deposits which is now covered by statutory redress schemes.

12. Quality Assurance Procedures

None

RESIDENTIAL LANDLORDS ASSOCIATION (RLA)

The Residential Landlords Association based in Manchester is one of the major landlords associations in the country. It has some 6000 members with over 100,000 units of accommodation under their control. Primarily, the Association is a representative lobbying on members behalf to national Government and other official agencies. The Association also provides services to its members, including a bi-monthly magazine, an extensive website and a helpline. The Association also provides the only plain English, Crystal Mark plain English approved OFT vetted tenancy agreement together with associated tenancy documentation. The Association also provides insurance and mortgage services for members and publishes a bi-monthly magazine, Residential Property Investor. Training of landlords is seen as a key way of promoting the improvements in the sector.

Criteria for Judging Regulation/Redress Schemes

1. Ease of Application for Redress

A formal complaint must be in written form, signed by the person making the complaint, and it must include a contact address for further correspondence. For a complaint to be upheld it must relate to an issue contained in the code of practice or Articles of Association and be proved on the balance of probabilities to have occurred as stated. The code of practice is available on the RLA website. There are a series of quasi-judicial steps:

Step 1

Having received a formal letter of complaint the Secretary will record the date the complaint was received and confirm that the person(s) to whom the complaint relates is a member of the RLA at present and was so at the time the grievance occurred. The association will respond to the individual(s) making the complaint to inform them that a formal investigation is to be undertaken.

Step 2

Within 14 days of a formal complaint being received the association's Secretary will appoint a director to investigate the complaint. The Secretary will write to the person(s) to whom the complaint relates to invite that person to respond to the complaint within 14 days. The investigating director shall consider the complaint and decide.

- a) To dismiss the complaint.
- b) To seek further information.
- c) To hold a formal disciplinary hearing.

Step 3

The parties will be invited to a disciplinary hearing committee consisting of two directors of the RLA (other than the investigating director) and both parties may also provide witnesses to give evidence.

2. Explicit Internal Complaints Procedure

It is not required by code of practice

3. Explicit Timescale for addressing a Complaint and any Potential Redress

The initial steps of the complaint procedure have an explicit timetable.

4. Services Standards Code

The code of conduct aims to achieve and promote the highest standards of conduct by members in order that the image and professional status of the private sector landlord may be improved and advanced. These rules are also aimed at protecting the public against unethical practices and provide a means of complaint against any member-landlord who fails to honour them. By adopting these rules it is the intention of the RLA to promote good standards of accommodation and service, and to develop cooperative relationships with local authorities, local and national government representatives, and other agencies. The code applies to members' activities as a landlord, property management agent and letting agent. These rules set out general principles of applying high standards rather than specifics.

5. Sector Coverage of scheme

Members of the association own over 250,000 private rented properties throughout the UK.

6. Scale of Compensation Available

No compensation is available from the RLA.

7. Redress and Disciplinary Penalties for Contravention

The code of conduct rules are binding upon all members of the RLA. A member has to co-operate with any investigation applies regardless of whether he has allegedly broken a rule of the RLA and has to abide by decisions. A disciplinary investigation may be instigated only when a formal complaint has been made in writing to an officer of the RLA. Complaints may be received from other members of the Association, prospective, existing and prior tenants of the member to which the complaint applies, recognised agencies and other bodies, and from members of the public.

8. Independence of Redress

The RLA regards itself as the independent arbitrator

9. Financial Security of Scheme

Not applicable. However, a member acting in the capacity as an agent for the purpose of property management and letting must have appropriate professional indemnity insurance as well as public liability insurance for all activities including landlord activities.

10. Publicity and Information on Scheme

No information available on this

11. Consumer Perceptions

Not known

12. Quality Assurance Procedures

The code of conduct is viewed as the quality assurance procedure but it does not cover complaints. The Association's aim is to improve professionalism among landlords in the private rented sector. To this end the RLA promotes training for landlords. The RLA persuaded the Government to allow training to be introduced on a compulsory basis as part of the HMO licensing process. Subsequently the RLA has worked with Leeds City Council, the Country's largest single licensing authority, in providing such training, on a non profit making basis. It is a condition of all licences issued in Leeds that the landlord and managing agent has to undergo training (unless already subject to appropriate professional continuing development).

BRITISH HOLIDAY & HOME PARKS ASSOCIATION AND NATIONAL CARAVAN COUNCIL

The British Holiday & Home Parks Association and the National Caravan Council are the primary organisations representing the interests of the British parks industry. Membership of the BH&HP is made up of the owners and managers of park home estates, touring and tenting parks, caravan holiday home parks, chalet parks and all types of self-catering accommodation. The NPHC represents manufacturers of residential park homes, residential park owners and managers, and suppliers of specialist services and products to the park home industry. They have a joint code of practice for selling and siting holiday caravans. These organisations have recently changed their independent redress scheme to IPCRS which is detailed under a separate heading but this appears not to be publicised on appropriate websites although it has been explained in a trade magazine. IPCRS is detailed later in the Appendix but the entry here reflects the former scheme.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

There is an industry complaints procedure for a caravan owner if their site operator is a member of the Holiday and Home Parks Association and the National Caravan Council. These trade associations will review all complaints and use their disciplinary procedures against any members who are found to have breached the code of practice. There are costs involved to the complainant in taking the issue to arbitration but these are not explicit from the outset. The Institute of Arbitrators charges fees on the application for arbitration but these may be refundable to the successful party in some circumstances.

2. Explicit Internal Complaints Procedure

There is no requirement for a caravan park to have an explicit complaints procedure although the code of practice requires that when a park owner receives a complaint he must take immediate notice of it and take action to achieve a mutually acceptable settlement. Park owners must advise a complainant of the conciliation processes offered by the trade associations and the independent arbitration services available.

3. Explicit timescale for addressing a Complaint and any Potential Redress

There are only limited set timescales for elements of the procedure and these relate to the complainant's responsibilities not to the redress of the complaint. The formal procedures are as follows:

Step One

A person with a complaint should, in the first instance, take the matter up direct with the Park Owner.

Step Two

A caravan owner who is still dissatisfied can refer the matter for conciliation to the park owner's trade association. Addresses are on the relevant web sites. The association will take steps to conciliate within one month of the matter being referred to them.

Step Three

If the complaint is still not resolved either party may approach the Director General of the relevant association who shall advise him on how he may apply for independent arbitration within the two special schemes operated by The Chartered Institute of Arbitrators. Caravan owners can choose whether or not to use these schemes. If they decide to use them the Park owner is obliged to agree to use them. Arbitration is legally binding.

Application to seek resolution of the problem through the arbitration schemes must be made within two months of receiving the advice from the Director General. The arrangements are:

- a) In the event of a complaint arising from the level of increase in pitch fees the parties may seek resolution of the complaint under a special Holiday Caravan Pitch Fee Arbitration Scheme.
- b) Any other complaint will be referred to a Holiday Caravan Arbitration Scheme. Under this scheme arbitrations will normally be on the basis of documents only. This is a relatively low cost scheme.

The website states that arbitration arrangements can be obtained from the Trade Associations or direct from the Chartered Institute of Arbitrators.

4. Services Standards Code

The trade associations' code of practice sets out principles of good practice in the operation of parks where there are caravans under private ownership. This code is viewed as a minimum standard. The code provides details on required practice with regard to licence agreements, selling techniques, tenure, removing the caravan from a park or pitch, pitch fees and other charges, resales, and arrangements within the park.

5. Sector Coverage of Scheme

The code of practice applies only to holiday homes. The majority of the UK's parks, some 2700 out of circa 3500 are members of the BH&HPA providing some 360, 000 pitches. Together the two trade bodies operating in the park homes industry (NPHC

and BH&HPA) represent member companies owning and managing over 900 residential parks, with some 60% (48,000) of all park home pitches in the UK, plus 90% of all residential park home manufacturers.

6. Scale of Compensation Available

It is a decision of the arbitrator and there are no formal limits.

7. Redress and Disciplinary Penalties for Contravention

In serious breaches of the code of practice this may result in expulsion of the member from the trade association to which he belongs. However, no more details are given in the code of practice.

8. Independence of Redress

The final stage of the complaints procedures involves independent arbitration using the Chartered Institute of Arbitrators. The Institute will appoint an independent arbitrator/arbitrator. Under the provisions of the Arbitration Acts 1950 to 1996 and other relevant statutes unless otherwise agreed any award of the arbitrator/arbitrator is binding on all parties and enforceable through the courts.

9. Financial Security of Scheme

Any compensation has to be paid by caravan site operator but there is no requirement to have insurance and a complainant has to pay their own costs up front.

10. Publicity and Information on Scheme

Details of schemes are available on websites but under the members heading and there is no requirement in the code of practice for information to be shown on complaints procedures in site offices.

11. Consumer Perceptions

Unknown

12. Quality Assurance Procedures

Unknown

HOUSING OMBUDSMAN

The Housing Act 1996 requires all registered social landlords to be members of the Housing Ombudsman but council housing is not within the remit of the service. Council tenants must complain to the Local Government Ombudsman. The service includes all landlords registered with the Housing Corporation and any landlord who has taken over local authority homes, such as a 'local housing company'. The service also includes private landlords which have joined it voluntarily including unregistered subsidiaries of registered social landlords. The ombudsman is actively promoting his service to the private sector. Any complaints about shortcomings in the way homes are managed, as long as it is made by the resident affected or an authorised representative are dealt by the service.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

The service is free. The service aims to set out its views clearly, avoiding jargon if possible. Complainants must have first exhausted the internal complaints procedure of their landlord. The problem has to have occurred in the last twelve months. There is no prescriptive set of procedures for complaints, rather the service tries to tailor the process to the characteristics of the complaint.

2. Explicit Internal Complaints Procedure

Voluntary members have to have an internal complaints procedure.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

Its website makes the following promises:

“We aim to acknowledge all correspondence (letters and emails) within 3 working days of receiving it. Addressing substantive points may take some time, particularly in respect of ongoing cases or when there is a high volume of information to consider, but we will always try to send you a full response within 15 working days or let you know when it is likely to take longer.”

“We aim to give you a timely response to your telephone enquiries. If you telephone our office and no-one is available to speak to you, we aim for someone to return your call within 3 days.”

However, beyond the initial response deadlines there do not appear to any further explicit timetables.

4. Services Standards Code

Voluntary members must agree to follow an accepted code of practice such as that of the RICS or ARHM.

5. Sector Coverage of Scheme

On 31 March 2007 the service had 2,274 landlords as members of which 64 were voluntary private landlords. The private landlords accounted for 45,131 units while the social housing landlord units totalled 2,348,065 units. Most the private housing units are probably shorthold assured tenancies in the housing stock of subsidiaries of housing associations.

6. Scale of Compensation Available

At the end of the investigation the ombudsman may order the landlord to redress the matter or recommend a course of action. This may include compensation. If the landlord does not comply with the recommendation the service expects an explanation.

7. Redress and Disciplinary Penalties for Contravention

The ombudsman may refer a registered social landlord to its regulator if it believes it is acting unreasonably.

8. Independence of Redress

The service is run by Independent Housing Ombudsman Ltd, a company limited by guaranteed and non-profit making. The ombudsman is appointed by the relevant Secretary of State and is required to publish an annual report. It is a full voting member of British and Irish Association of Ombudsman (BIOA).

9. Financial Security of Scheme

All registered social landlords are required to join and any financial compensation is paid by the landlord.

10. Publicity and Information on Scheme

There does not appear to be a prerequisite for advertising the service as part of membership of the scheme.

11. Consumer Perceptions

The ombudsman has commissioned research on the understanding and awareness of the scheme. Stakeholder forums are also held and it is intended that they will be held at least annually in future. The website notes that the service welcomes feedback from users of the service on how it may improve communication or anything else it does.

12. Quality Assurance Procedures

The ombudsman service has a number of minimum service standards that it expects to follow when dealing with administrative matters in respect of individual cases or management issues generally. The service also emphasises training and skill audits.

INDEPENDENT CONSUMER REDRESS SERVICE (ICRS)

The ICRS was launched in 2007 to enable consumers and businesses access to low cost and speedy consumer redress. It is a general scheme including funeral directors and an internet provider. Both the caravan industry trade associations, NPHC and BH&HPA, are members on an equal footing since August 2007 of ICRS administered by IDRS. It provides two avenues of redress – the Independent Consumer Conciliation Service (ICCS) to help the parties settle the dispute themselves, or otherwise to recommend a potential solution, or the Independent Consumer Arbitration Service (ICAS) which is binding arbitration.

The procedure is set out below assuming conciliation (ICCS) is used first followed by arbitration (ICAS).

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

The service is free to a complainant.

The starting point is the completion of the ICCS application form. On receipt of the completed form IDRS appoints a conciliator and invite each party to submit a case statement of no more than two A4 pages plus supporting material. The conciliator speaks to both parties by telephone or in writing to request further information or suggest solutions. If a solution does not emerge from subsequent discussions between the parties the conciliator may suggest some opportunities for a settlement. If there is still no resolution the conciliator will recommend a solution and the parties will have 14 days to agree. If there is no agreement it then can go to ICAS or to court.

The ICAS application form has to be signed by all parties to the dispute before the arbitration can begin. On receipt of the completed form (and fee from the NCC or BH&HPA member) IDRS appoint a arbitrator from its panel. The procedure is then a documents only arbitration.

2. Explicit Internal Complaints Procedure

3. Explicit Timescale for addressing a Complaint and any Potential Redress

On receipt of a written ICAS complaint IDRS send it to the member firm which has 21 days to give a formal written defence. This will in turn be sent on to the complainant who will have 14 days to give a written reply. The arbitrator will make a decision within 42 days of receipt of all the written papers. Any agreed payment must be made within 21 days of the decision.

4. Services Standards Code

5. Sector Coverage of Scheme

Together the two trade bodies operating in the park homes industry (NPHC and BH&HPA) represent member companies owning and managing over 900 residential parks, with some 60% (48,000) of all park home pitches in the UK, plus 90% of all residential park home manufacturers.

6. Scale of Compensation Available

No limit

7. Redress and Disciplinary Penalties for Contravention

These are unclear.

8. Independence of Redress

ICRS is managed independently by IDRS Ltd which is an associate corporate member of the British & Irish Ombudsman Association. The independent adjudicator decision is legally binding.

9. Financial Security of Scheme

The member firm must pay up front the costs of the administrator and the conciliation or adjudicator.

10. Publicity and Information on Scheme

There appears no requirement to publicise the scheme by member firms.

11. Consumer Perceptions

The scheme is new and has limited membership.

12. Quality Assurance Procedures

If any party has a complaint about ICAS or ICCS, or the adjudicator, or a member of the administrator's staff then the complaint should be made by following IDRS's complaints procedure. Copies of the procedure are available from the IDRS website.

INDEPENDENT PROPERTY CODES ADJUDICATION SCHEME

The Association of Home Information Pack Providers (AHIPP) was founded in 2005 to ensure proper representation for those involved in the new HIPs industry. Membership is open to organisations and individuals involved in the production, collation and distribution of HIPs. Similarly, the Council of Property Search Organisations (CoPSO) was set up to represent the interests of those involved in the production, collation and distribution of property search reports.

IPCAS is a search and HIP dispute resolution service established on 8 March 2007 by AHIPP and CoPSO. It is administered by IDRS Ltd, a wholly owned subsidiary of the Chartered Institute of Arbitrators. Only organisations or individuals (hereafter referred to as firms) registered with the Property Codes Compliance Board (PCCB) have access to the scheme. The PCCB was established in September 2006 to maintain a register of firms committed to operating within the new standards of practice. IPCAS was designed to govern the resolution of disputes between individual consumers and PCCB registered firms arising from searches undertaken or HIPs produced as part of the property buying and selling process.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

An application for redress through this scheme can be made only on the IPCAS Adjudication Claim Form and this must be endorsed by the company. The complainant has to ask the company or the administrator for an application form. If the company is a firm registered with the Property Codes Compliance Board (PCCB), (the PCCB was established in September 2006 to maintain a register of firms committed to operating within the new standards of practice), they must accept an application for adjudication under IPCAS provided the dispute has not been resolved to the satisfaction of the consumer by the company's internal complaints-handling procedure. The consumer's application must give reasons for the items claimed, and in particular should include details of events leading up to the dispute, the precise nature of the dispute, grounds for claiming the items or remedy sought, and reasons for the amount of any compensation claimed.

The IPCAS cannot deal with disputes involving a complicated issue of law nor a disputes subject to an existing or previous court action unless that action is suspended or discontinued by agreement between the parties or by order of the court.

2. Explicit internal Complaints Procedure

A member of the scheme has to have a formal complaints scheme and the complainant must go through this first. If they do not accept the decision reached or

there is no final response within eight weeks, the complainant can take the complaint to IPCAS.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

On receipt of a claim, the administrator sends the company a copy of that claim. The company has 14 working days from the date of receipt of the claim to provide the administrator with either written confirmation that the claim has been settled, together with details of the settlement or their response to the claim. If there is no written confirmation of settlement, or the company does not file its response in the time allowed, the adjudicator will determine the dispute by considering only the information provided by the consumer. If the company replies, IPCAS then sends the complainant the company's reply and gives them seven days to make any final comments. The administrator will send a copy of any comments to the company, and at the same time appoint an independent adjudicator and provide the parties with the adjudicator's name. The adjudicator may contact the parties by phone, fax, letter or email to ask for further documents or information they need to make their decision. The adjudicator will make a decision on the matter, usually within six weeks of the application being made. On receipt of the final decision, the complainant is required to contact IPCAS within six weeks of the date of the decision to say whether or not they accept it. If they accept the decision, the firm is expected to pay any compensation directly to the consumer within four weeks of the consumer having notified acceptance of the decision. If they do not accept the decision, they may take the dispute to court.

4. Services Standards Code

IPCAS is an adjunct to the HIP and Search Codes of Practice. The HIP Code provides protection for homebuyers, sellers, estate agents, conveyancers and mortgage lenders who rely on the information included in a HIP within England and Wales. It sets out minimum standards which HIP providers have to meet. The Search Code provides similar protection and minimum standards in relation to property search reports.

5. Sector Coverage of Scheme

There are in excess of 330 firms (including franchisees) on the PCCB web page's register and it is estimated that the volume of business transacted by these firms represents in excess of 80% of the entire UK Personal Search and HIP business.

6. Scale of Compensation Available

In order to qualify under the scheme, the dispute must involve a claim for an amount not exceeding £5,000, including any consequential damages and VAT, for any one consumer. In the event of compensation for inconvenience, the adjudicator can make compensation up to £250 per claim.

7. Redress and Disciplinary Penalties for Contravention

In a case where the adjudicator's investigation ends up agreeing with the complaint, the adjudicator can tell the company to give the complainant an apology or explanation; give the complainant a product or service, or take some practical action that will be to the benefit of the complainant.

In addition to compensations available, the adjudicator may also recommend that the company changes its policies or procedures as a result of the dispute. The adjudicator's decision is only binding on the company when accepted by the consumer. The decision cannot be appealed. It can only be accepted or rejected, and only by the consumer.

If there is a serious failure to comply with the codes the PCCB can use further disciplinary measures.

8. Independence of Redress

IPCAS is managed independently by IDRS Ltd which is an associate corporate member of the British & Irish Ombudsman Association. The scheme is run in association with the PCCB.

To oversee that the individual HIP providers (and search firms) are code compliant, the PCCB was established in September 2006 to maintain a register of firms committed to operating within the new standards of practice. The PCCB is an independently run body that overlooks and controls the Search Code (owned by CoPSO) and the HIP Code (owned by AHIPP). The PCCB has a governing Board, with industry and public interest directors. The role of the PCCB is to ensure that registered firms providing property search reports and HIPs comply with the Search Code and the HIP Code.

The PCCB requires all registered firms to produce an Annual Statement of Compliance.

9. Financial Security of Scheme

The scheme is funded by its members.

10. Publicity and Information on Scheme

All HIPs which comply with the HIP Code are required to include a HIP Code logo in the pack and consumers can check whether a HIP provider subscribes to the code by contacting the PCCB. Similarly, property search reports compliant with the Search Code are required to include the Search Code logo.

11. Consumer Perceptions

As IPCAS only started to operate fully recently it is still early to gauge consumer perceptions.

12. Quality Assurance Procedures

The adjudicators are trained in dealing with the types of disputes IPCAS covers, as well as trained in the law (particularly the law relating to consumer contracts). Each adjudicator is a member of the parent organisation, the Chartered Institute of Arbitrators, and is subject to its strict 'code of ethics' and disciplinary procedure.

If any party has a complaint about the scheme, the adjudicator or a member of the administrator's staff they can complain to IDRS Ltd by following its published complaints procedure. The scheme keeps a record of all disputes referred to it without recording the names of those complaining. It also encourages subscribers to provide a self-certification questionnaire. All these help companies to improve their services to customers.

The PCCB independently monitors compliance with the codes by registered property search firms and HIP providers, and also assesses the extent of compliance of each subscriber. They also undertake detailed compliance visits to registered firms and undertake other code compliance functions.

OMBUDSMAN FOR ESTATE AGENTS

The OEA was set up as OCEA in 1989 and became operational in 1990 for corporate estate agents. It was established in its present form on 1 January 1998 as an independent body open to the whole market, and NAEA and RICS representatives became Board Members in their own right. OEA offers an independent service and deals with disputes between its member agencies and consumers. It extended its services to letting agencies in 2006.

The Ombudsman is independent of member agencies and provides a free, fair and impartial review of complaints falling within specified terms of reference. The OEA will consider a complaint where a consumer believes that a member agency had infringed on their legal rights or not complied with OEA codes of practice; treated them unfairly; and/or been guilty of maladministration (including inefficiency or undue delay) in a way that results in monetary loss or inconveniences.

The mediation work for letting agencies is subcontracted to The Dispute Service (TDS), an impartial redress scheme.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

There are up to three stages in the process – two internal stages within the firm – the latter involving a member of staff not involved in the transaction, followed by reference to the Ombudsman. This is a free service. The Ombudsman will not normally review a case until the internal complaints procedure of the member agency involved has been exhausted.

When the complaint is received the OEA sends a complaints form with guidance on how best to present the case. At the same time the complainant receives full information about how the OEA will reach a fair and reasonable decision. The complainant may also complete a complaint form online. There is a ‘waiver of confidentiality’ section that allows the Ombudsman’s office to gather and use information about the transaction leading to the problem in their investigation.

If the OEA decides that we can look into your complaint is within the scope of their jurisdiction it will assess the appropriate procedure. In most cases the main way of resolving a complaint is by a full case review. However, the Ombudsman looks for opportunities to achieve a mediated settlement without recourse to a full case review.

The complaint must be current, that is, it must be first made at early as possible and must not exceed 12 months after the subject of the complaint occurred. Unless there is new evidence, the Ombudsman will not consider a complaint previously dealt with or case under consideration by another body, e.g. court.

2. Explicit Internal Complaints Procedure

The code of practice requires member agencies to maintain and operate an in-house complaints procedure. Members must where practical to provide consumers with a named point of contact who assist with dealing with queries etc. In-house complaints procedures should be in writing and readily available for inspection by Ombudsman. All complaints, oral and written, should be noted in writing. The agent must deal with any properly appointed agent of the complainant.

If the complainant remains dissatisfied there must be a facility for a speedy separate and detached review of the complaint by staff not involved in the transaction. In the case of a single office agent a member of staff not directly involved in the transaction should deal with the complaint.

Following the conclusion of any internal investigation, which must not exceed 15 days following the initial complaint, the member agency is obliged to make a written statement expressing their final view, and including any offer made. This statement must be copied to the complainant and the Ombudsman. The letter must also tell the complainant how the matter can be referred to the Ombudsman within six months.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

All written complaints must be acknowledged within three working days, and a proper branch investigation promptly undertaken. A formal written outcome of the branch investigation must be sent to the complainant within 15 days. If longer is needed, the complainant should be told in writing, with an explanation, and given an indication of timescale. The outcome of the investigation must be sent to the complainant within such timescale.

The Ombudsman then decides on the procedure, which could be reconciliation, mediation or a full review and depending on the case, proceeding may take up to 3 months from date application is signed.

A 2006 survey indicates that two-thirds of respondents indicated that they were satisfied with the time it took to resolve their complaint.

The OEA website informs people that if the member agent does not deal with a complaint within eight weeks of receiving it in writing, then the complainant may take it direct to the Ombudsman.

4. Services Standards Code

The code of practice relating to sales of property which all member agents have to comply with was approved in 2005 by the OFT Consumer Codes Approval Scheme.

The code of practice relating to lettings has been in effect since April 2006. The code of practice was also approved by ARLA, and much of it is the same as its own

code. It has yet to be accredited by the OFT Consumer Codes Approval scheme. The procedures set out the principles and practice required in the provision of services to landlords as clients and tenants/potential tenants as customers and is the same as ARLA's except for the complaints procedure.

5. Sector Coverage of Scheme

The scheme is mandatory for agents run by NAEA principals, partners and directors offering an estate agency service. It also has many corporate members and the OEA membership totals approximately 11,000 branches covering the vast majority of estate agents (see Table 4.1).

The scheme has also recently become mandatory for letting agents run by NAEA principals, partners and directors and letting agents accredited by NALS. The OEA started registering letting agents from April 2006, with complaints accepted from June of that year. Approximately 1700 members had been signed up for the lettings scheme by the end of 2006 and 3748 branches were covered by the beginning of January 2008. The extension of the scheme to NALS offices from the beginning of 2008 has added a further 580 offices. In the first nine months of 2007 the Ombudsman received 466 complaints about lettings which could not deal with because the firm in question was only a member for selling.

6. Scale of Compensation Available

The Ombudsman can recommend member agents pay compensation of up to £25,000 in any one case. If a claim is over £25000 OEA can still deal with the matter provided the firm voluntarily agrees to participate. If there is no such agreement the complainant needs to apply to the courts. The size of awards made during 2005 and 2006 totalling £150,600 are indicated in the table below and are applicable only to residential agency. The figures for 2007 include lettings.

Scale of Compensation, 2005 -2007

Size of Awards	2005	2006	2007
£1 – 99	39	36	64
£100 – 499	192	181	272
£500 – 999	46	42	74
£1000 - 2999	32	33	42
Over £3000	6	5	20
Total Awards	315	297	492

Source: Derived from OEA Annual Reports 2006 and 2007

7. Redress and Disciplinary Penalties for Contravention

The code of practice requires that a firm cooperates with any investigations of the Ombudsman, comply with any award made by the Ombudsman and accepted by complainant, and pay the amount of any such award with the period stipulated.

Cases of non-compliance are dealt with by the OEA Council via the Disciplinary and Standards Committee who can issue an informal warning, formal warning, a notice of dismissal from OEA Ltd in writing (subject to an appeal).

Awards by OEA are to compensate the claimant not to punish the agent (it has no remit to do so as it is not the regulator of the profession).

8. Independence of Redress

The OEA Scheme is set up as a limited company – OEA Company Limited – and has three parts to its structure - the Board, Office of the Ombudsman and Council. In 2006 the Council comprised a retired politician (chair), a policy advisor to Age Concern, a consumer protection consultant, a journalist specialising in personal finance, and two Board appointees - the chief operating officer who is also a member of RICS and NAEA, and the chief executive of NAEA. The chief operating officer takes into account terms of reference determined by the independent Council.

The OEA is a full voting member of BIOA and therefore is an Ombudsman in terms of independence, governance and approach. The Ombudsman is appointed by the Council members in accordance with Nolan principles. The post is advertised. The present Ombudsman was appointed for a fixed term of 3 years from 1st December 2006 but since the BIOA recommendations have now been revised he will have a new five year fixed term from 1st Jan 2008 making a total of 6 years. The original idea was to give 3 years with another 3 years barring any fall outs or incapacity but this will achieve the same result and comply with best practice.

Quarterly reports and case summaries are published on the website.

Decisions made by the Ombudsman are binding on member agents but not on complainants.

9. Financial Security of Scheme

The OEA is funded by members' contributions. Member agents must have indemnity insurance.

10. Publicity and Information on Scheme

The OEA scheme requires that all members must display the OEA logo on window and marketing literature and on letter heads. Copies of a leaflet entitled, "A

Consumer Guide” must be displayed in all offices and there must also be available, free of charge, copies of the OEA code of practice to give to customers on request. A notice to this effect must be displayed with the Consumer Guides. All OEA member agents who have signed the OFT license can also display the OFT logo alongside the OEA logo as a sign to consumers that they can deal with such companies with confidence. The Code of Practice is available to consumers on request.

11. Consumer Perceptions

Since 2004 there has been an annual survey of complainants whose cases have been finished to assess satisfaction. In 2006 the results of the survey (51% response rate) found two thirds happy with how their complaint was dealt with and the time taken to resolve it. The main source of information to consumers about the scheme is the agent (38-39%) and the internet (31-32%). A high proportion, 85%, of complainants in 2006 indicated that complaining to the OEA was very or quite easy and virtually all, 97%, of complainants in 2006 rated staff as very or quite polite.

The OEA also undertakes compliance surveys. In order to ensure quality and independent analysis of monitoring process, consumers are able to comment on compliance monitoring forms which are then sent to a third party company for independent analysis.

12. Quality Assurance Procedures

The terms of reference under which the scheme operates give the Ombudsman a clear mandate to contribute to the improvement of standards in the profession by highlighting best practice and by publishing poor practice and helping to eliminate it. The OEA hold regular meetings with member agencies to receive feedback that helps the process and maintenance of service standards. There is an independent review of the code of practice on a regular basis. By involving all stakeholders such as National Association of Estate agents (NAEA), RICS, the OFT and other consumer groups in the consultation process it will help in the revision and/or introduction of new requirements and to clarify existing ones.

SURVEYORS OMBUDSMAN SERVICE (SOS)

In 1998 RICS introduced a mandatory complaints handling procedure for members that must encompass an independent redress scheme. The RICS set up the Surveyors Ombudsman Service (SOS) as an independent entirely free voluntary service to handle complaints about its members. The SOS was first launched as a pilot in Scotland in January 2004 and was extended to the whole country on 1 June 2007 and so is a new service. It is not related to the Royal Institution of Chartered Surveyors and handles complaints about any firm which chooses to become a member of the scheme this includes firms which are not members of RICS.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

The starting point for a complaint is with the internal complaints handling procedure of the firm as set out for SAS. Normally, the SOS will not examine a complaint until the firm's complaints handling procedure has been exhausted. If still dissatisfied the complainant may contact the SOS by writing a letter, email or by phone and they will be advised on how to take concerns further. The Ombudsman considers complaints involving maladministration, poor service, negligence, incompetence and financial loss.

During the investigation process the complainant will only hear from the SOS if they need more information. When a decision is reached the SOS will write to the complainant with the initial findings and reasons for making them. At this time, the complainant can give more information about the complaint but only if they feel that the SOS has made a significant error in fact which, would have a material effect on the decision, or they have an important new evidence which will have a material effect on the decision. When the process is finished a copy of the Ombudsman's final decision is sent to the complainant.

The Ombudsman decides to make an award, and the complainant accepts it, then the Chartered Surveying Firm has agreed that they will keep to the decision and take the action that the Ombudsman has asked for in the final decision.

2. Explicit Internal Complaints Procedure

All RICS member firms have a complaints handling procedure as part of the RICS code of conduct.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

The complainant must have told the firm about the problem within 12 months of first knowing about it. If the firm's internal complaints handling procedure has not sorted out the problem after three months of making the complaint it can be passed to SOS. The deadline for bringing complaint to SOS attention is nine months from

the date they first told the firm about the problem. But the complainant may also seek redress from SOS if they receive a letter from the firm that says they will no longer be considering the complaint.

At the SOS office, how long it takes to come up with a solution depends on how complicated the complaint is, and how quickly they can get to the facts. It aims to issue a provisional conclusion within six weeks.

4. Services Standards Code

RICS have a principles-based regulatory regime. The rules take the form of a short, simple set of principles prescribing how members must conduct themselves in their personal and professional lives.

5. Sector Coverage of scheme

The SOS deals with complaints made against firms which have chosen to become a member of the scheme. The majority of its members are also members of RICS. The jurisdiction of the Ombudsman covers the scope of the requirements placed upon RICS member firms under its regulatory regime. This scope applies to a SOS member even if that member is not a member of RICS. At least 2,200 firms have joined the scheme but it is unclear precisely what surveying activities these firms specialise in.

6. Scale of Compensation Available

The Ombudsman can award up to £25,000 for loss and expenses could be made. The average award for 2005 during the pilot scheme was £302 per case, the range of awards being £50-£887.50. An award up to £500 could also be made for stress and inconvenience. The average award was £166 in 2005, the range being £0 - £500 (Annual Report 2005/06).

7. Redress and Disciplinary Penalties for Contravention

The Ombudsman may ask the firm to provide any or all of the following: a service or some practical action that will benefit the complainant; an apology or explanation; and/ or a financial award.

It is not the Ombudsman's role to punish firms when deciding what solution to provide. However, the Ombudsman may also recommend that the firm to make changes to its policies or procedures.

A RICS member can face parallel or subsequent disciplinary action if the issue is also pursued through the institution's complaints procedure.

8. Independence of Redress

The Ombudsman Service Limited (TOSL) is the company which administers SOS.

TOSL is a not-for-profit private limited company which is funded by its members. TOSL is a full voting member of the British and Irish Ombudsman's Association and so meets the full published criteria for recognition.

The SOS Council mostly consists of independent people. But there are also industry representatives from the Member Board. There are nine members of the Council: six are independent and three nominated by the Member Boards. The Member Board has an independent Chairman and an equal number of RICS members and independent people. The role of the Council is to oversee the operation of the service in accordance with the annual business plan and budget. Among the primary roles of the Council are the appointment and to maintenance/safeguarding of the independence of the Ombudsman.

It also sets, monitors and reviews performance standards of the service, appoints the Ombudsman, and is charged with maintaining and safeguarding the Ombudsman's independence. The Ombudsman position is advertised and appointed for a fixed 5 year term, which could be extended to 8 years. The current Ombudsman's contract is permanent. However, the Council has powers to dismiss the Ombudsman in the event of contravention of laid down regulations.

An annual report is published by the Ombudsman summarising complaints. To date these reports relate only to Scotland as the pilot. Analysis of complaints received in for the pilot scheme during 2005/6 are shown in the following table.

Residential Surveys	52
Valuation and Professional issues	24
Property Management and factoring	7
Agency (buying and selling)	6
Property searches, plan preparation, planning advice	6
Building and quantity surveying	5
Land Compensation	3
Non-surveying	9
Total	112

9. Financial Security of Scheme

TOSL also runs two other ombudsman schemes, Otelo – the Office of the Telecommunications Ombudsman, and, The Energy Supply Ombudsman. TOSL is funded by its members. The TOSL governance structure includes a Member Board for each scheme it runs. It is the responsibility of each Member Board to ensure that the service is appropriately funded. The scheme is funded by its members.

10. Publicity and Information on Scheme

A firm's complaints handling procedure must give details of the various redress schemes available but the RICS website does not give details of specific schemes. There appear to be no requirements to publicise the scheme to clients.

Marketing materials explaining the scheme to consumers are distributed to the public through libraries, council offices, Citizens Advice Bureaux and Solicitors' Property Centres. They are also sent by mail directly to a number of solicitors' firms and other interested bodies. The service also issues information in languages other than English and other formats available in their website. SOS recommends to members to display the SOS logo in their office windows and actively inform service users about the scheme. But this is not compulsory and it appears that few firms inform their clients about the scheme when they sign up to a service.

11. Consumer Perceptions

It is intended to conduct surveys to establish consumer perception but it is too early as the scheme only started operating fully in June 2007. A small scale study of the first complaints handled by the Service will be undertaken to establish initial consumer perceptions. A comprehensive customer satisfaction survey will take place when there is sufficient volume to do so. It is expected that this will be at the end of 2008.

TOSL has a full-time communications department responsible for building awareness of the role and services of SOS among member companies/firms, the customers and potential customers of member companies/firms, consumer/advice bodies and other stakeholders. Marketing materials are distributed via the SOS website and by post. Exhibitions and conferences are attended and there is an outreach programme. There is an information pack for members, which includes advice about how to inform customers about the SOS and logo stickers to display in windows. As the SOS has only been in operation since 1 June 2007, members are only beginning to inform their clients about the scheme when they sign up to a service.

12. Quality Assurance Procedures

The standards of service which can be expected for the SOS are published on its website and available in hard copy upon request. These standards describe what complainants and members can expect when the SOS deals with a complaint between a consumer and a member company. If a complainant or a member company has a complaint about the level of service from the SOS, the complaint is handled initially by the Chief Operating Officer. If a resolution cannot be found, the complaint can be passed to TOSL's Independent Assessor. The Independent Assessor is appointed by the TOSL Council and has separate Terms of Reference.

ARBITRATION AND NEUTRAL EVALUATION PROCEDURES FOR SURVEYING DISPUTES (ANEPSD)

The Royal Institution of Chartered Surveyors (RICS) is the leading source of land, property, construction and related environmental knowledge. In 1998 the RICS introduced a mandatory complaints handling procedure (CHP) for members. The basic principles of the CHP are that members must investigate complaints thoroughly complainants must have access to an independent redress mechanism. Initially there was one scheme promoted by the RICS, the Surveyors and Valuers Arbitration Service (SAS) but in 2007 the Surveyors Ombudsman Service (SOS) was introduced aimed primarily at personal clients.

This development can be seen as part of a reorganisation of schemes. From 1 January 2008 SAS has been replaced by ANEPSD for disputes in surveying and there is now a formal division with SOS dealing only with consumer complaints.

The ANEPSD procedures which are outlined below are currently in draft form pending final clearance. They can be applied when one of the parties is an RICS member. There are two potential avenues. The Arbitration Procedure for Surveying Disputes provides a formal and binding process where the dispute is resolved by the decision of a nominated third party. There is also a Neutral Evaluation Procedure for Surveying Disputes that is a private and non-binding technique whereby a third party; usually a judge or somebody legally qualified, gives an opinion on the likely outcome at trial as a basis for settlement discussions. This latter dispute mechanism is not detailed here.

Criteria for Judging Regulation/Redress Scheme

1. Ease of Application for Redress

The claimant firm must first exhaust an internal complaints procedure of the firm it is in dispute with. If the claimant decides to seek arbitration by this mechanism the firm must ask the other party in writing by post, fax or email to agree to an arbitration under the scheme's rules. The notice must include each party's address details, copies of relevant documents, a brief summary of the dispute and the remedy claimed and any proposal for the qualifications needed by any arbiter.

IDRS appoint the arbitrator from one of their panels. The arbitration is normally based on the consideration only of formal written statements and evidence for each party.

2. Explicit Internal Complaints Procedure

The RICS's code of conduct requires that a firm has a complaints handling procedure and that a copy of it is available on request.

3. Explicit Timescale for addressing a Complaint and any Potential Redress

Within 14 days of receiving the arbitration notice the respondent may send the claimant a response that either admits or denies all or any part of the claim, makes any counterclaim, and responds to the proposed arbitration arrangements.

IDRS appoint an arbitrator within 21 days of receiving the applicant. Within 28 days after notice of the appointment of an arbitrator the claimant must send a written statement of the case. The respondent firm then has 28 days to send a written statement in defence. The claimant then has a further 28 days to write a reply and then the respondent has up to another 14 days to supply a counter statement.

4. Services Standards Code

RICS have a principles-based regulatory regime. The rules take the form of a short, simple set of principles prescribing how members must conduct themselves in their personal and professional lives.

5. Sector Coverage of scheme

The ANESPD can relate to all disputes between RICS members and anyone in dispute with an RICS member, but no statistics are available on the numbers involved in specific activities undertaken by RICS members or firms.

6. Scale of Compensation Available

No limit known

7. Redress and Disciplinary Penalties for Contravention

The arbitration is conducted under the Arbitration Act 1996 and the outcome is legally binding.

A RICS member can face parallel or subsequent disciplinary action if the issue is also pursued through the institution's complaints procedure.

8. Independence of Arbitrator

ANESPD is provided on an independent basis by IDRS which is an associate member of the British & Irish Ombudsman Association.

9. Financial Security of Scheme

The arbitration process is paid for by an initial registration followed by the work of the arbitrator paid for on an hourly basis (subject to a cap). The arbitrator also charges travel costs and other expenses if a hearing is involved. The losing party as a general rule pays these costs.

10. Publicity and Information on Scheme

A firm's complaints handling procedure must give details of the various redress schemes available but the RICS website does not give details of specific schemes. There appear to be no requirements to publicise the scheme to clients.

11. Consumer Perceptions

The scheme is new but consumer perceptions of its predecessor are unknown.

12. Quality Assurance Procedures

IDRS has its own internal complaints procedure and details are available on its website.