

**Improving the home buying and selling process**

**Call for Evidence**

**Response from NAEA Propertymark**

**December 2017**

**Background**

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.
2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation.

**Comments**

**Estate agents**

**Q1. Should the industry do more to make customers aware of how to complain?**

**a. If so, how?**

3. Yes, we do think the industry can do more to make customers aware of how to complain. It is imperative that all estate agents have a complaints procedure in place that is prevalent in their office and on their website. Agents should also be making it clear to consumers as to which redress scheme they belong and there should be more information on property portals. To improve standards the industry should be regulated with minimum entry requirements to practice and the formulation of one Code of Practice that the sector must adhere to.
4. All estate agents must have a complaints procedure in place. The legal requirement for estate agents to belong to one of three government approved independent redress schemes assumes that all agents have a complaints procedure. Whilst the schemes are independent and provide an impartial service for resolving disputes between consumers and agents, they can only take action after the agent's complaints procedure has first been exhausted. It is a condition of NAEA Propertymark

membership that agents have a complaints procedure. We provide an easy-to-use guide for members that tells consumers how to make NAEA Propertymark agents aware of their views so that their concerns can be addressed quickly and professionally. This requirement should be extended across the sector.

5. It should be clearer to consumers as to which redress scheme estate agents belong to. Public awareness of the importance of choosing an agent that belongs to a redress scheme is low. Clearly displaying the scheme in their office, on their website and through consumer facing literature would mean that consumers will be more informed at the outset of their relationship with the agent. Furthermore, more house-hunters than ever are now starting their search for a new home by looking online at one of the property portals. Consequently, the portals have a greater role to play in providing information to consumers and should also make clear which redress scheme the agent belongs to.
6. We believe that overarching statutory regulation of the whole sector is needed. Ensuring agents are suitably qualified and meet minimum competency standards is the only way to drive up standards of service for consumers and eliminate existing issues in the sector. To coincide with regulation there must be enforcement and clear industry standards. There is no obligation on agents who are members of a redress scheme to abide by a Code of Practice. Of the three government-approved redress schemes (The Property Ombudsman; The Ombudsman Service; Property Redress Scheme) only The Property Ombudsman has a Code of Practice for its members. This means that although consumers have a means of redress through the schemes after they have been let down, and potentially suffered financial loss, there is no statutory industry standard to prevent substandard agents from practising in the first place.

**Q2. Should the government take further action to enforce current transparency regulations regarding disclosure of referral fees? a. If so, what action should be taken?**

7. Yes, the Government should take further action to enforce current transparency regulations regarding disclosure of referral fees. Referral fees must be fully disclosed to the buyer and the vendor to ensure that any fee and commission the agent will earn is quantified. The information should be explained clearly in the sales particulars, when the sale is arranged and outlined on the agent's website. To this end, we have long called for the guidance to help agents comply with the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 to be presented in a way that consumers will find easier to understand. We also believe that the guidance should go further in including

specific examples which will help agents to understand what they should and should not say when dealing with consumers.<sup>1</sup> A standard form could also be produced for the industry which must be signed at instruction and evidenced throughout the buying and selling process.

**Q3. What would the impact be of banning referral fees?**

8. We believe that increasing transparency around referral fees would be a better option than a ban. A ban on referral fees would have a detrimental effect on estate agency businesses impacting on the business models of many estate agents who have built up strong and innovative working relationships with solicitors and conveyancers in their local area. This would lead to a decline in revenues for these agents, with smaller agents, in particular, affected the most. Furthermore, the quality of a firm's legal or financial work and responsiveness are key factors that influence estate agents in building these relationships. The benefit of an agent using an effective conveyancer for example can increase their control of a sale or chain, which often results in a quicker turnaround.
  
9. A ban on referral fees would also risk increasing costs for consumers. Purchasing or selling property involves lots of time, effort and expense. Finding the right solicitor, mortgage lender or conveyancer to coordinate the property transfer can remove a lot of the burden. It can also save consumers money and reduce the risk that the selling or buying process is delayed. Furthermore, there are many reputable businesses, such as in the retail sector like John Lewis who offer referral and partner schemes. For property transactions, the most important thing is to ensure that the process is transparent, the wording used is clear, the information is upfront and the consumer understands that they have choice over the financial and legal services they wish to use.

**Q4. Should the government introduce more regulation for estate agents?**

**a. If so, what sort of regulation would be appropriate?**

10. Yes, the government should introduce more regulation for estate agents. Ultimately NAEA Propertymark believe that full mandatory government regulation of sales is the quickest and most effective method to eliminate unprofessional, unqualified and unethical agents from the property sector. It is our view that the Government cannot simply go on trying to legislate for every eventuality because this is unmanageable to enforce. We are concerned that there is no statutory regulation to ensure agents are

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<sup>1</sup> <http://www.naea.co.uk/lobbying/consumer-protection-regulations.aspx>

suitably qualified. Additionally, agents who are not members of a professional body do not have to meet minimum competency standards.

11. The Government has recently announced that it will regulate letting agents to ensure that they register with an appropriate organisation, satisfy minimum training requirements and comply with an industry code of practice. To ensure consistency in an industry with multi-disciplinary firms where 70% of letting agents also practice sales, the Government should widen the scope of regulation to include both sales agents and block management agents. Ensuring that the whole housing market is under the same regulatory umbrella will reduce confusion, inconsistency and cases of where services fall between different regulatory regimes.
12. We believe there should be a single Code of Practice for everyone working in the industry. Legislation alone cannot cover all aspects of lettings agency work and therefore a comprehensive Code of Practice under which the industry is required to operate will allow both more detailed guidelines to be provided than that which can be set out in either primary or secondary legislation and the ability to amend the Code easily without statutory intervention when either other legislation affecting the industry or best business practices change. These principles would cover the whole property industry (sales, lettings, block management) and would become the Statutory Code which would be used by the Courts to interpret housing legislation. Then, the Department for Communities and Local Government or a regulator would hold much more detailed industry-specific codes (one for lettings, one for sales, one for block management). Consideration has been given to one single Code covering all disciplines but it is felt that this would be too difficult to create and too confusing when considering the diversity of work carried out under the various industry disciplines.
13. Estate agents should be required to hold a specific qualification in residential sales at Level 3 in order to practice.<sup>2</sup> The Level 3 qualification is a requirement for membership of NAEA Propertymark. It is an Ofqual regulated qualification ideal for estate agents who are actively working in the industry. This qualification is broadly equivalent to A-Level standard and has been designed and developed over a number of years by practitioners, lawyers and academics to provide sales agents with a comprehensive knowledge and understanding of the industry, best business practices and the legislative framework in which they practise. Its syllabus contains everything that those academics, lawyers the industry leaders believe are necessary for an agent to

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<sup>2</sup> <http://www.propertymarkqualifications.co.uk/qualifications/sale-of-residential-property/england,-wales-northern-ireland-qcf-level-3-technical-award/>

practise to a high professional standard. Broken down into four key themes the qualification teaches:

- Health & Safety, Security & General Law
- Law Relating to Residential Property Sales
- Practice Relating to Residential Property Sales
- Property Appraisal & Basic Building Construction

14. Individuals should also be required to undertake at least 12 hours of Continuing Professional Development (CPD) per year. This will ensure that in addition to meeting initial requirements to join the industry, agents continue to learn and develop their skills and understanding as the industry and its associated legislative requirements change. NAEA Propertymark currently delivers over 50 events each year including Masterclasses as well as both regional and national conferences to ensure that estate agents are on top of the latest property sales best practice, legislative updates and that they meet their legal obligation for an annual anti-money laundering update.<sup>3</sup>

15. However, such a significant change needs to be managed carefully and we recommend that Government adopts a long-term strategy to reach this goal; starting initially, as has been done in Scotland through the requirement for letting agents to be regulated via registration and qualification, with a requirement for the business owner to be qualified (or most senior person with day-to-day responsibility for the sales practice, if not the business owner) together with at least one other person in every branch of the business. This will ensure there is sufficient knowledge in all branches. The second stage would be moving to a position, over a period of time, where all agents need to be qualified in order to practise.

16. The framework for regulation should build on existing best practice through requiring membership of a professional body who are overseen by an overarching regulator. Regulation in isolation will not work because, as with any industry, there will always be a minority who flout the regulations. Therefore, regulation must be combined with adequately resourced enforcement agencies. There should be a focus on protecting consumers through transparency of banned agents and publishing details of disciplinary action taken against them. A major communication campaign is required to increase awareness of any new regulatory regime and the additional consumer protection it provides. Furthermore, many letting agents are also sales agents and therefore regulated under the Estate Agents Act 1979. Consequently, we believe that being banned under Estate Agents Act 1979 should also constitute a Banning Order Offence under the Housing and Planning Act 2016. Without combining the lists, there

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<sup>3</sup> <http://www.naea.co.uk/events.aspx>

is a very real danger that a banned sales agent could set up as a letting agent or vice versa which will do little to improve the industry.

### **Conveyancing**

#### **Q5. What should industry do to help consumers make more informed decisions when selecting a conveyancer?**

##### **a. How could government help facilitate this?**

17. We believe that a single clear guide should be available to consumers as to what they should be looking for from a conveyancer. This information should be published and promoted by the Government and relevant trade bodies.

#### **Q6. What improvements can be made to the process of property searches in order to speed up home buying and selling?**

18. The number of questions could be reduced by removing those that are irrelevant or have no impact on the home owner or transaction.

#### **Q7. Would there be an advantage to encouraging buyers and sellers to use the same conveyancing provider?**

##### **a. If so, how could it work, without creating conflict of interest problems?**

19. We do not think that there would be an advantage to encouraging buyers and sellers to use the same conveyancing because of the conflict of interest that it would create. We also believe that lenders will only accept and require separate representations.

### **Harnessing digital technology**

#### **Q8. How would a predominantly digital conveyancing process affect home buyers and sellers?**

20. We believe digitalisation will deliver a more streamlined, faster and cost effective process for home buyers and sellers as well as for agents. Earlier this year the Land Registry of England and Wales carried out a consultation process that could lead to digital smart contracts replacing paper exchanges of contracts and mortgage deeds. We welcome the work the Land Registry is doing. One of the biggest criticisms of conveyancing is the length of time the process can take. Providing all parties access to secure online technology to share documents would speed up the process significantly.

**Q9. What should the government do to accelerate the development of e-conveyancing?**

21. The Government need to look at the amount of land in England and Wales that is unregistered with the Land Registry and work to improve processes to ensure that this information is available. The Government also need to look at how the Land Registry will digitise large volumes of work quickly and efficiently.

**Q10. Are there any particular public sector datasets which you think should be released as open data in order to drive innovation in the home buying and selling process?**

22. We believe that centralisation of Land Charges with the Land Registry would help to drive innovation in the home buying and selling process. Searches are submitted to local authorities and they provide information about planning applications, building regulations or conditions on the property or land being sold. The Land Charge information should be made available digitally from the Land Registry in a standard format, cost and response time. For instance, some local authorities return the searches within two days, others can take up to eight weeks.

**Q11. How could other parts of the home buying and selling process be improved through better use of digital technology?**

23. There should be a digital log-book for each property that is sold. The log-book should have sections for the different stages of the transaction, allowing for documentation to be uploaded from the various parties with dates for deadlines and timescales. The log-book would also hold information on the property such as the Energy Performance Certificate. This would allow for all parties involved to log-in and find out information and ensure that they are more engaged and better informed. Property chains can become long and complicated, and a problem at any point, such as simple as missing piece of paperwork can cause delays for all involved. An online filing system would speed up the process and allow for documents to be loaded onto a central point and importantly be downloaded quickly and easily to produce documents on request. Furthermore, the conveyancing process requires information from various third parties before contracts can be exchanged. The log-book would help to avoid delays and allow regular contact with the agent and buyer to help deal with any issues that arise.

**Mortgages and the requirements of lenders**

**Q12. What more could be done to encourage borrowers to seek a Decision in Principle from their preferred lender before they start house hunting?**

24. To encourage borrowers to seek a Decision in Principle from their preferred lender before they start house hunting, it could be made mandatory that they have this in place before being able to make an offer on a property. This would speed up the process for many buyers as a mortgage adviser will look at their income, any debts, and the deposit, to make an assessment on how much the consumer can borrow. By making this process mandatory at the start of the house hunt, it will ensure that the consumer's search is realistic and increase the chance of offers being accepted.

**Q13. What other improvements could be made to the process of applying for and obtaining a mortgage?**

25. Lenders could ask the consumer to complete an initial application and set out the documents required in order to assess the Decision in Principle. The Lender could also issue a document confirming this position, which the consumer can then show to the estate agent and solicitor ready for instruction.

**Informing consumers**

**Q14. How do we ensure buyers and sellers are able to access good guidance on buying and selling homes?**

26. We believe there is an opportunity from the Department for Communities and Local Government to produce a 'How to Buy' and 'How to Sell' guide for consumers. This would build on existing guides, such as the 'How to Rent' guide which the Department produces for the private rented sector.<sup>4</sup>
27. Consumers need to be better educated in the type of property they are looking at. Information provided by estate agents and on the property portals should be detailing whether the property is freehold or leasehold and providing a definition of these terms. The information should then describe clearly how the conditions on the different types of property, such as ground rent for leasehold, specifically apply to the property being looked at.
28. The Government could do more to promote the benefits of using a professional agent. Consumers currently benefit from those agents who already choose, voluntarily, to belong to a professional body, such as NAEA Propertymark, and in doing so, adhere to high standards and professionalism. Therefore, the focus of any new regulatory

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<sup>4</sup> <http://www.propertymark.co.uk/advice-and-guides/renting/england.aspx>



regime must be on ensuring those same consumer protections exist across the whole industry rather than being provided solely by those agents who have chosen to be regulated through one of several professional bodies.

29. We believe that any regulator and the professional bodies should act as consumer champions but do not believe they need any additional powers in order to pursue this role other than those already set out in response to previous questions. In defining what we mean by “acting as a consumer champion”, we believe the regulator and professional bodies must play a major role in building awareness amongst the general public of any regulation, the consumer protections that regulation provides and what it means to them, how to avoid using unregulated and unlawful agents, and how consumers can access redress when things go wrong.
30. Regulators and professional bodies undertaking this consumer champion role are already seen in other industries (such as the travel industry) and the property sector can learn from the confidence consumers place in ABTA (Association of British Travel Agents) and ATOL (Air Travel Organiser’s Licence). The ATOL model is particularly relevant as it provides the same Client Money Protection in the travel industry which the professional bodies offer in the property industry. The only difference being Government supports the pay-outs in the ATOL scheme whereas CMP in the property industry is self-financing by the industry itself.
31. We strongly believe that, as in the travel industry, the professional bodies in the property sector must act as consumer champions. This is why we launched Propertymark in February 2017. Our research showed that the industry was well aware of NAEA (and its four sister associations) and what we do; but the general public – buyers, sellers, landlords and tenants – had very low awareness. Thus, Propertymark was launched to move the organisation away from an industry-facing licensing to consumer-facing protection with the key emphasis being to raise awareness amongst the general public that our members voluntarily adhere to strict Codes of Practice, ensure they are at the forefront of developments in the industry and display the ‘Propertymark Protected’ logo to demonstrate they are actively ensuring maximum protection for their clients: that they are “Principled, Professional, Propertymark Protected”.<sup>5</sup>
32. To achieve this objective, in September 2017, we embarked on an advertising campaign to highlight the importance of using an agent offering Propertymark Protection. As well as the TV campaign which has already started to air across various

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<sup>5</sup> <http://www.naea.co.uk/about/raising-awareness/>

channels including More 4, Sky and UKTV, we are investing in prominent advertising across digital and social media as well as the property portals (Zoopla and Rightmove). In total, the TV campaign alone has been shown around 3,500 times and has reached over 30 million people; carefully targeting those consumers likely to be using the services of either a sales or lettings agent in the near future.<sup>6</sup>

### **Better information at point of sale**

#### **Q15. Should sellers be required to provide more information before they market their property? a. If so, what information should be provided?**

33. Yes, we do believe that sellers should be required to provide more information before they market their property. NAEA Propertymark have produced a Property Information Questionnaire (freehold and leasehold versions) to help sellers and agents understand the types of details that should be disclosed.<sup>7</sup> Under the Consumer Protection from Unfair Trading Regulations 2008 both the seller and agent must disclose anything, within their knowledge, that would affect the transactional decision of the average consumer. This form runs in line with the Consumer Protection from Unfair Trading Regulations 2008 and should be made mandatory for all agents. The form should be completed prior to any property being marketed.

#### **Q16. Should sellers of leasehold homes be encouraged to engage with their freeholder before marketing their home for sale?**

##### **a. If so, in what ways should they engage?**

34. Yes, we do think that sellers of leasehold homes should be encouraged to engage with their freeholder before marketing their home for sale. This would mean that the sellers' lease administrator is put on notice to provide the lease information pack to reduce the time and cost it takes to gather relevant information relating to the property, such as service charges and ground rent. Leaseholders should provide the industry-approved Leasehold Property Enquiry Form (LPE1).

### **Sharing information about each other and increasing commitment**

#### **Q17. How can government increase commitment to a sale between buyers and sellers?**

##### **a. Would development of standard agreements help?**

35. We do think that the development of standard agreements once all the information about the property is available upfront, an offer should be binding with financial

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<sup>6</sup> <http://www.naea.co.uk/about/advertising-campaign/>

<sup>7</sup> <http://www.naea.co.uk/lobbying/consumer-protection-regulations/>

penalties for any party who withdraws from the transaction. It is our view that consumers are concerned about seeing a joint commitment to progress with a transaction once an offer is accepted. As a result once a solicitor has been instructed there should be a maximum time in which the sale should be exchanged. How the current system operates means that either party to a transaction can pull out, without any financial penalty, right up to the point of exchange. This creates uncertainty, fear and an unwillingness to commit both financially and emotionally to a quick progression of the transaction. It also means that the buyer is unlikely to pay for searches and a survey too early in the process, when there is a fear the seller may withdraw and re-market.

**Q18. How should we best tackle gazumping?**

36. NAEA Propertymark does not think that gazumping is a widespread issue. Essentially where it does occur this due to a shortage of property for people to buy in highly desirable areas. However, gazumping is not an issue in Scotland because a house sale contract is deemed binding once an offer has been accepted. Therefore the UK Government could require, as an option, buyers and sellers in England to enter into pre-contract agreements with both sides paying a deposit to help potentially stop gazumping in the small number of incidences where it may take place.

**Q19. What other steps could be taken to increase confidence in the housing chain?**

37. Every sale agreed is subject to contract, therefore as set out previously in our response to this Call for Evidence reforms are needed to ensure that transaction timescales are reduced. This is because the greater time between dates of exchange allows for a greater risk of transactions falling through.

**Buying a leasehold property**

**Q20. Should managing agents / freeholders be required to respond to enquiries within a fixed time period?**

**a. If so, how could this be done?**

38. Yes, we do think that managing agents / freeholder should be required to respond to enquiries within a fixed time period. In relation to the purchasing of leasehold property, getting information from managing agents is a concern for estate agents. We propose that managing agents should have to respond to requests for information within 7 to 14 days.

**Q21. Should maximum fees be set for the services and information provided by managing agents / freeholder to home buyers and sellers?**

**a. If so, how could this be done?**

39. Yes, maximum fees should be set for the services and information provided by managing agents / freeholders to buyers and sellers.

**Q22. Should the government introduce standard mandatory forms for collecting information about leasehold?**

40. Leasehold is a complicated system and we believe that the Government should introduce standardised lease contracts to further protect consumers. Standardised leases with set terms that balance the interests of leaseholders and freeholders, similar to tenancy agreements, should be introduced. The standardised clauses should be consistent with whether a lease is extended as well as for new build.
41. The Government could ensure that all lease extensions have a minimum number of years, with a peppercorn rent and with no increased premium payable to the freeholder. The Government could also abolish 'marriage value' and simplify the procedure and information concerning Right to Manage. In addition, once conditions of the lease have been waived, such as in a signed freehold survey at the time of purchase, the Government should ensure that they can't be enforced some years later.

**Buying a new build property**

**Q23. What can be done to improve the customer experience of buying a new build home?**

42. All developers should be required to sign up to the Consumer Code for New Homes. The Code has been established to ensure that best practice is followed by registered developers in respect of the marketing, selling and purchasing of New Homes, and also sets expected standards for after sales customer care service.<sup>8</sup> Currently, consumers are only covered by the Consumer Code for New Homes if buyers have bought or are buying a new build home from one of the Code's Registered Members. The provisions of the Code apply to the new home for a period of two years after the date of completion of the sale. It should be made mandatory for all developers to abide by the Code's provisions. The Code covers the new home buying process to ensure that the selling activities the developer engages in are of a consistently high standard. This includes:

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<sup>8</sup> <http://www.consumercodefornewhomes.com/>

- Pre-Purchase Stage: ensuring high standards of customer service, fair and clear documentation, adequate information provision.
- Contract Exchange Stage: governing the Contract of Sale, requiring minimum standards for fair and transparent contracts, accurate information about when the property will be available and protecting deposits.
- Handover and After Sales: providing minimum standards for handover and after sales processes, ensuring consumers' health & safety and ensuring they have suitable information for maintaining and living in your property.
- Complaints and Disputes: giving consumers access to clear, speedy and low cost dispute resolution if things don't go according to plan.

43. To further improve the customer experience of buying a new build home, developers should not build on land that they do not own the freehold to. A number of cases have emerged where developments have been built on leased land that is not owned by the housebuilder. Purchasers should be offered first refusal on the sales of the freehold of their home. As widely reported in the media, as a consequence of the 'right of first refusal' only applying to flats, but not houses, developers selling new homes as leasehold are not legally obliged to tell the purchaser if they have sold the freehold to an investment company. Many purchasers of new build leasehold houses have planned, as the law allows, to buy the freehold after two years, but as a result of the developer selling the freehold, the costs have significantly increased by quotes far higher than the original builder had set out. Leaseholders looking to purchase their freehold should not be at a disadvantage, and costs should be capped to avoid escalating fees.

**Q24. What more can be done to help buyers of new build homes quickly secure a mortgage offer?**

44. We believe that in most cases buyers of new build property are content and mortgage offers are secured because they have to exchange contracts within 28 days, which provides a stable timescale. However, we are concerned that due to a lack of supply of new property overall this has meant that people are willing to overlook some of the detailed information concerning leasehold houses, in particular, for the immediate ability to get on the housing ladder. Stricter requirements are needed around the use of developers referring purchasers to their chosen solicitors or financial advisers.

**Any additional points**

**Q25. What else should the government be doing to help improve the home buying and selling process, and reduce the cost for consumers?**

45. Although housing is a devolved matter it is imperative that any changes to the house buying and selling process brought about through the UK Government's Call for Evidence are consistent in both England and Wales. The Government's recent consultation paper into 'Tackling unfair practices in the leasehold market' related to England only.<sup>9</sup>

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<sup>9</sup> <https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>