



# Isle of Man Office of Fair Trading

## CONSULTATION ON PROPOSED CHANGES TO LEGISLATION RELATING TO ESTATE AGENTS AND PROPERTY AGENTS

### SUMMARY OF RESPONSES



**Isle of Man**  
Government

*Reilhtys Ellan Vannin*

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# 1. Introduction

In his introduction to the consultation document, the Chairman of the OFT stated:-

*"For most people, buying and selling property is the most significant transaction which they will undertake and the estate agent generally plays a major role in brokering that transaction.*

*The current legislation relating to estate agents is the Estate Agents Act 1975 which (inter alia) provided for the registration of estate agents with the former Local Government Board and from 1987 the Department of Local Government and the Environment (DoLGE). In an endeavour to bring the 1975 Act up to date and to close some obvious gaps, DoLGE promoted the Estate Agents Act 1999. Although the 1999 Act was passed, it was never brought into operation through an Appointed Day Order.*

*In the 2010 restructuring of Government, responsibility for estate agents passed to the OFT.*

*The Estate Agents Act 1975 has two fundamental purposes:*

- *To regulate the operation of estate agents*
- *To provide a framework of consumer protection around the transactions of sale and lease of residential property*

*The proposed Estate Agents (Amendment) Bill would deal with the necessary changes to the Estate Agents Act 1975, to provide an effective and proportionate framework of regulation. The proposals in the Bill itself are designed to allow estate agents to continue to operate much as at present, whilst essentially modifying those areas where it is at best, unreasonably difficult, and at worst, virtually impossible, to be fully compliant with the law.*

*In parallel with the proposed Bill the OFT is proposing to use, for the first time, the new section 62A of the Consumer Protection Act 1991 (which was introduced by the Consumer Protection (Amendment) Act 2016). This will enable us to apply to the Island, with necessary modifications, two United Kingdom Statutory Instruments which provide consumers with effective redress in relation to both the purchase and sale of property and property rental."*

The purpose of the consultation document was to invite comments on a number of proposed changes to the Estate Agents Act 1975, including making provision for misleading conduct to enable the Estate Agents Act 1999 to be repealed, and on the possibility of facilitating the use of approved redress schemes by applying UK legislation to the Isle of Man by means of section 62A of the Consumer Protection Act 1991. Specific questions (see Appendix 2) were posed to prompt debate.

## 2. The Consultation Exercise

The consultation exercise ran from 10<sup>th</sup> March 2017 to 21<sup>st</sup> April 2017.

Whilst it was a public consultation, the consultation document was sent directly to:-

- Tynwald Members
- Attorney General
- Local Authorities
- Chief Officers of Government Departments, Boards and Offices
- Isle of Man Chamber of Commerce
- Isle of Man Law Society
- Isle of Man Trade Union Council
- Chairman and Members of the Estate Agents Tribunal
- Registered Estate Agents, Letting and Property Management Agents
- UK Redress Schemes

The consultation document could be found on both the Isle of Man Government website and the OFT website.

## 3. The Responses

13 responses were received in total.

Responses were received by letter, by email and online.

A list of respondents is attached as **Appendix 1** and a summary of the responses, including representative comments, is attached as **Appendix 2**.

The OFT would like to thank each respondent for taking the time to assist it with this important work.

## 4. Conclusions

Notwithstanding the fact that the respondents agreed with all but one of the proposed changes, in light of the responses, the OFT recognises the need for further consideration of a number of issues, including:-

- Should the Estate Agents Register be more than just a list of qualified estate agents, i.e. should it be a register of businesses clearly indicating who owns and who controls the businesses?
- Concerns surrounding the meaning of "qualified estate agent".
- The possibility of any requirement for businesses to be "under the control of" a single qualified estate agent being abused.
- With regard to misleading conduct by persons who, in the course of a business, materially mislead prospective purchasers or tenants, what "misleading" means, which "persons" should be subject to the provisions and which defences should be available to alleged offenders.
- The fact that most respondents were of the opinion that individuals selling or renting their own property should be subject to provisions concerning misleading conduct.
- With regard to publishing decisions of the Estate Agents Tribunal where allegations are proven, whether there is any justification for effectively 'naming and shaming'.

The OFT is now of the opinion that it is not possible to make use of section 62A of the Consumer Protection Act 1991 to apply UK provisions relating to property transactions to the Island but will explore the possibility of facilitating the use of approved redress schemes by amending the Estate Agents Act 1975 to include necessary enabling provisions.

It is obviously of paramount importance that any changes to the Estate Agents Act 1975 must strike a balance between regulation and facilitating business.

The issue of an on-going lack of enforcement has been raised during the consultation. Any changes to the Estate Agents Act 1975 must ensure that this issue is addressed, perhaps with reasonable lead in times to allow non-compliant businesses to become fully compliant.

## Appendix 1

### List of Respondents

- Gordon Pollard, Manx Utilities
- R W Henderson MLC
- Anthony Shield, Total Media Rentals Limited
- Patrick Parish Commissioners
- Marown Parish Commissioners
- Helen Ainsworth, Harmony Homes Limited
- Charles C Garside
- Geoffrey P R Black, Black Grace Cowley Limited
- Chief Executive, Department of Infrastructure
- D M Lowey, Lowey & Co
- Tim Groves, Black Grace Cowley Limited
- Norman Teare
- Mark Canty, Cowley Groves & Co Limited

## Appendix 2

### Summary of Responses

(All comments are quoted verbatim.)

#### General Comments

- with regard to section 1.4 of the associated consultation document, which makes reference to adding Government Department`s and Statutory Board`s to the parties/organisations which will be exempt from any amended legislation. As such, please take this email as formal notification that MU, as a Statutory Board, welcomes this proposal in the strongest possible terms, and are most keen to ensure that such an exemption is subsequently included in any forthcoming amended Act(s).

**Gordon Pollard, Manx Utilities**

- I would strongly advocate the following to be included in any legislation / orders / codes of practice attributable to any forth coming legislation –
  - Paper work issued by and approved by the Advocates Forum 'IOM Law Society' I think, here on the IOM refers within in it when a customer is buying a house (personal experience) to boilers and 'CORGI REGULATIONS' – I have pointed out that this should be changed immediately as we are on 'Gas Safe' now and have been for some time. This paper work that is issued by Advocates for buyers to read and agree with / ask questions upon – is well out of date. I would also say as part of this exercise the OFT should review the paper work and questionnaires advocates produce for customers buying a property - should be reviewed by OFT – I was given sheets of paper work where the seller had to fill in the answers regarding the property I was buying, and then had the opportunity to ask the seller through their advocates further clarifying questions on their answers. If the 'CORGI bit was wrong, out of date, that calls in to question the validity of other information / questions of the papers used – this has to be checked
  - The forms used to obtain information from the seller ask for a 'boiler service' date. Is should and must ask for 'age of boiler'
  - These forms should and MUST require the age of the property to be given over, I've yet to discover how old my house is!!! I can guess but this is sheer negligence as far as I am concerned
  - There must be a question on the state of the roof – and make the seller provide accurate information on the state of the roof – which must include if the roof is new, re-roofed, had work done upon it, is there anything known to wrong with the roof - and most importantly must provide the purchaser with whether the roof is 'felt and battened' or with the new membrane that is used on roofs these days. It must clearly cause the seller to admit to whether the roof is older, not felt and battened, or if it is an even older roof where by it is 'torched.' Which has happened in my case. I now need to have a re-roof when I can afford the £20k or so. This fact was hidden from me during the purchase process, even though the seller put on the advocates form nothing known wrong with the property. They would have known the state of the roof as they had lived there for 11 years
  - The question form when it came back from the sellers advocate in my case – on various property questions that were posed within the form on the state of the

property – suffering damp, subsidence etc – where just answered by the ‘buyer beware’ get out clause – giving no factual information that the seller could have and should have provided – this must be changed – and the advocates must change this paper work to cause a full and frank answer – I understand that any seller can only answer as best they can – but they should and must provide an answer, and the advocates made by law, to ensure it is answered in a more transparent and truthful manner, and any seller not allowed to hide behind ‘buyer beware’ – I’ m afraid those days are long gone

- With regards to the survey undertaken by my mortgage lender – which I agree – is not a full survey – there must be rules governing what this should and must cover – even if it puts the price up a bit – at least there is consumer protection. The surveyor used by my mortgage lender guessed the age of our house to be 1950! This showed his professional incompetence. Further to that the area where my house is, is a well-known pre WWII development as I have since found out. I was comforted by the surveyor’s comment on the age of the property as that would indicate that the roof would be at least felt and battened
- The Surveyor put as his general assessment of the property – something like ‘building is of an age where maintenance will be ongoing’ – as a general comment, and that the property was valued within the right range. That was his main comment. They should be enforced to say more than that. These ‘lending surveys’ are money for old rope as far as I am concerned and are of little value or comfort. As I say, paying a bit extra, and causing them to do a better job – not a full survey, would alert the vendor to any possible problems and consider taking out a further more extensive assessment. However, these can be very cost prohibitive when every penny counts when buying a house in the first place
- Mortgage Provider Survey Assessments should and must come with the scope of this
- Also – the seller should and must be made to answer, and in transparent detail if there is anything wrong with the drainage system / sewers to the property, works undertaken etc. An acceptable answer could be - ‘nothing to our knowledge, and we have never had to have any work carried out’ – but are accountable if they are found out to be hiding anything that they would have reasonably known about. This also includes the house electrics.
- There should be on the advocates questionnaire form – ‘windows’ – do all windows close properly, are there any known problems with any or all of the windows, are the windows new, replaced during the ownership of the seller, or where the windows the same as when the seller bought the property
- How long has the seller lived at the property should be another question

I feel so strongly about this that when I see the draft legislation coming to Legislative Council I will be preparing amendments to the Bill. I am quite happy to meet and discuss, and provide all my paper work from my house purchase to illustrate what I am talking about. There is a good opportunity here to protect consumers far better. I feel this does fall into the category of ‘misleading’ and we could do a lot better. A further thought on this subject is that a seller should have a full survey done of their property in preparation for the sale. I think this is done elsewhere. NOT every potential buyer who is interested, getting their own individual survey done – causing a property to be surveyed more than once or multiple times. **R W Henderson MLC**

(R W Henderson MLC also submitted three documents as evidence.)

- The Commissioners resolved to support the proposals.  
**Clerk to Marown Parish Commissioners**



- It is very worrying and disappointing that the consultation process fails to treat professional bodies as direct Consultees who have the recognised qualifications under the current act and may be able to forward quality information regarding case studies, working practice and help improve the protection for all (RICS, ARLA, NAEA, Isle of Man Association of Estate Agents.) It is very concerning the OFT perceive the Isle of Man TUC to be a higher priority of Professional Consultee on this matter.

I do believe this legislation should be considered and promoted however it appears there is an absence of case studies and examples. There is a perception of copying and pasting from UK legislation is naïve and ill considered when considering the unilateral evolution of Estate Agent, Landlord, Tenant and Land Law on the Isle of Man:-

- a) The existing legislation is different (Estate Agent and Landlord and Tenant)
- b) The appendix only refers to UK legislation which is not in existence in the Isle of Man
- c) It does not take into account or link to existing legislation.

There is an elephant in the room which continues to be ignored by the Government and places consumers at risk for which there are numerous case studies of a lack in enforcement of UK Agents practising on the Isle of Man and other such breaches. This is not a level playing field. Since 1975 the Isle of Man Estate Agents Act has required qualification to RICS/Degree/NFOPP level. (ARLA, NAEA etc) in accordance with Blue Book Standards of Professional Practice.

The OFT can not enforce this legislation due to an inadequate drafting of the original Act and has no power to prosecute if the agent is not compliant by registration. Since April 2016 the Isle of Man Estate Agents have had to comply with DNFPB legislation and again there appears to be an absence of enforcement with none local and none standard practitioners even though there are penalties in place for none compliance. It is grossly unfair towards local business who adhere to the subject fees, procedures and scrutiny and are placed at a competitive disadvantage. In addition it is allowing inconsistent consumer protection. It is currently Freedom to Flourish if you are an unregulated Agent practising on the Isle of Man or potentially based in the UK or further a field. I am willing to support this opinion with working examples however we believe the OFT and the FSA have enough data in this matter.

The document appears to have concentrated upon residential property and has not considered commercial which are all included within the definition of the 1975 Act.

I confirm I support the spirit of this proposal but urge greater consideration of legislative and professional/business reality including drafting to avoid being back at square one which has previously occurred with Manx legislation. **Charles C Garside**

- Either the OFT/Government/general public wants estate agents to be qualified in some way (FNAEA at minimum) and therefore competent, ethical and trustworthy or they want a free for all where e.g. a rogue in Jersey, sets up an IOM firm of estate agents (or letting agents), locally owned by the Jersey holding company, with the IOM business having 2 directors, one being a newly qualified "puppet" who complies with the proposed new Act such that they are deemed to be "in control of" the business. A rogue letting agent running off with thousands of pounds of client account rents and deposits is a scandal waiting to happen and will not be prevented unless the owner/owners who control the banking accounts are legislating for as the real "controllers" of the business.

**Geoffrey P R Black, Black Grace Cowley Limited**

- The legislation should not prevent an owner letting or selling their own property without the need for an Estate Agent. The Department wishes to have the ability to appoint the best person to carry out the transaction. For complex land purchase negotiations involving land for highway purposes, engineering consultants are sometimes required by the Department. This Act should not prevent that being possible. It is also felt that for the purposes of the Act, that Public Sector Landlords should not be considered as 'letting agents'. **Chief Executive, Department of Infrastructure**
- I was a partner in an established Estate Agency in 1975 when the Estate Agents Act was introduced. There have been many adjustments to the Act since that date, and for my part the Act has been a standard to work to, with to my knowledge, few infringements occurring. However with the effect of the Web the operations of traditional estate agents have been enhanced.

There remain a number of traditional Estate Agents with a high street presence on the Island. These provide the general public with face to face contact and access to the in house property expert who can answer questions and provide local knowledge of the property market. Web based estate agents, many of who do not have public offices, cannot offer these services in the traditional way. Additionally, every high street business incurs business overheads which Web based estate agents do not, as they often operate their business from home or from private offices. This means they can offer a financial package to potential customers far cheaper than high street located agents.

I agree to the proposals to deliver registration and control on all types of property management. An annual registration and bond system similar to the current Estate Agents registration and bond system could be implemented. Perhaps the existing Bond should be increased to £150,000 from the current £75,000.

I see no practical advantage in operating a redress system based on UK legislation. The Office of Fair Trading has the necessary powers, coupled with the officers of the Department of Local Government to be very effective in controlling the majority of aspects dealing with general conditions and behaviour of persons carrying out Estate Agency and Property management. **D M Lowey, Lowey & Co**

## Question 1

Do you agree that the Estate Agent Register system should be modernised and that it should be available online, as well as being available to inspect at the OFT's public counter?

Total no. of respondents who made comment(s) = 10

Comment(s) summarised as	Number of respondents
Agree	10
Disagree	0

### Representative comments – Agree

- I believe that under DOLGE the register was initially available on-line for public scrutiny, and would have no objections to this being implemented again.  
**Helen Ainsworth, Harmony Homes Limited**
- A list of registered estate agents may simply be a list of "qualified" agents employed to comply with legislation. The public need to know the name of the firm and who owns it and who controls it. **Geoffrey P R Black, Black Grace Cowley Limited**
- I fully agree if nothing else but to move with times and allow information to be more accessible. **Mark Canty, Cowley Groves & Co Limited**

### OFT Response

The OFT will now look to modernise the Estate Agents Register by making it available online.

## Question 2

Do you agree that, rather than requiring every director to be a qualified estate agent, the business must be under the control of a qualified estate agent? If not, please describe how you feel the business should be controlled.

Total no. of respondents who made comment(s) = 11

Comment(s) summarised as	Number of respondents
Agree	10
Disagree	1

### Representative comments – Agree

- Clarification should be made in respect to the definition of a "qualified estate agent". The current rules on relevant qualifications should be reviewed as someone who has passed the NAEA Level 3 qualification is by definition a qualified estate agent. Perhaps a review of what functions an estate agent is undertaking should also be reviewed and relevant qualifications set accordingly. For example is the estate agent acting in the sale & purchase of real estate or simply a lettings agent.  
**Anthony Shield, Total Media Rentals Limited**
- It is concerning that the OFT believe "Estate Agencies" were small partnerships. DeanWoods, Black Grace Cowley, Chrystals, Garforth Gray, Cowley Groves, Property Wise, Manx Move, Harmony Homes are all small partnerships the only larger corporate businesses are UK based agents operating on the Isle of Man which they appear unable or have the will to enforce the regulations or registration upon. (FSA or OFT) This statement provides an impression of "copy and paste" from a UK document rather than a study of reality of the Manx market place. The company should be controlled by a minimum of 50% Registered agents otherwise Professional Practice can be over ruled by Commercial Pressures of other Directors/Shareholders. **Charles C Garside**
- The Department feels it would be sensible to remove the requirement for every director to be a qualified estate agent. **Chief Executive, Department of Infrastructure**
- The term "qualified estate agent" needs to be defined presumably as a person on the Register of Estate Agents. **Norman Teare**
- To a degree. It is difficult in some cases to define who the business is under control under and therefore the terminology in my opinion needs to be clarified. I also believe that experience should be taken into account, for example should an experienced agent (i.e. 10 years plus) have any less right than a "new agent" who may have never worked in the industry yet has gained a qualification? **Mark Canty, Cowley Groves & Co Limited**

### Representative comment – Disagree

- Having one qualified estate agent being in control is open to widespread abuse, similar to current abuses. A firm of accountants or employment agents could employ a newly qualified chartered surveyor or member of the NAEA and state to the OFT that this person is "in control" whereas he is a puppet of business owners. This has been going on for 30

years where businessmen have "employed" a registered agent who is, ostensibly "in charge", but in reality, simply receives a fee for lending his name to the business. We believe that companies operating estate agencies should be controlled, operated and run by registered/qualified estate agents or that, at least, the controlling interest (51% plus) should be in the hands of a registered/qualified agent. There should be a "test" of what is meant by "under the control". The abuse of a holding company owning a subsidiary estate agency with, say, 2 directors who do not own any of the shares (owned by the holding company) should be banned. **Geoffrey P R Black, Black Grace Cowley Limited**

### **OFT Response**

This proposed change obviously needs looking at very carefully as there are concerns surrounding the meaning of "qualified estate agent" and the possibility of any requirement for businesses to be "under the control of" a single qualified estate agent being abused.

### Question 3

Do you agree that in order to protect consumers it should be illegal for a business to mislead purchasers and tenants?

Total no. of respondents who made comment(s) = 11

Comment(s) summarised as	Number of respondents
Agree	10
Disagree	1

#### Representative comment – Agree

- Clarification is needed whether the definition of not misleading would include photographs in advertisements. **Anthony Shield, Total Media Rentals Limited**
- The regulations should be balanced. As well as Agents there should be additional clear regulation when Landlords and Freeholders withhold or mislead information provided to Agents which could adversely affect Tenants and Purchasers. This additional direction and scope would aid enforcement and prevent abortive legal costs should an issue occur which an Agent could be charged but then relies on the defence of misinformation which has been caused by an unscrupulous Landlord or Vendor. An amendment to this proposal would place the onus on the Vendor or Landlord as well as the Agent to be honest, accurate and truthful, they would be unable to use the excuse or hide behind the Agent and this would be in the best interest of consumer protection and minimise costs to all parties concerned. The intention should be to prevent and deter these situations arising, rather than the hunger of prosecution. A prime example is a Vendor insisting upon an Agent it is 4 acres when it could be in the region of 3.5 acres to 3.75 acres or failure to disclose an agricultural tie or right of way. (There should be an allowance for reasonable margin of error. The Land registry is not accurate to two decimal point for linear measurement.) **Charles C Garside**
- I agree it should be illegal for a business to mislead purchasers and tenants but it will be necessary to amend the Estate Agents Act 1975 ("the 1975 Act") to ensure that it is illegal for employees of the business besides the person on the Register to mislead so that liability falls on the business. **Norman Teare**

#### Representative comments – Disagree

- The term "Mislead" is ambiguous, and difficult to define. The registered estate agent under the Estate Agents Act should be open and honest. Estate agent details of properties carry disclaimers. Property transactions are conveyed by advocates who are entrusted with carrying out thorough searches. The buyer should take all necessary advice before committing to a transaction i.e. independent surveys. **D M Lowey, Lowey & Co**

#### OFT Response

The OFT will now look to make provision for misleading conduct by persons who, in the course of a business, materially mislead prospective purchasers or tenants. In light of the responses, it is obvious that the OFT must consider at length what "misleading" means, which "persons" should be subject to the provisions and which defences should be available to alleged offenders.

## Question 4

Do you agree that individuals selling or renting their own property should not be covered by the misleading statement provisions?

Total no. of respondents who made comment(s) = 11

Comment(s) summarised as	Number of respondents
Agree	4
Disagree	7

### Representative comments – Agree

- I agree that individuals selling or renting their own property should be exempt but "their own property" needs definition and I suggest it should extend to more than one property, say five, and that private companies owning up to that number of properties be exempt also. **Norman Teare**

### Representative comments – Disagree

- They should be, and this should be made aware to them through advocates who will be used in any sale, and Advocates and other involved bodies with a sale need to be aware of these proposals and how to brief/advise their customers/clients accordingly so they are fully aware of the ramifications of this. And through the Advocates Forum.  
**R W Henderson MLC**
- Misleading is misleading whether done by property owners or agents. How individuals can be policed is another matter for consideration.  
**Anthony Shield, Total Media Rentals Limited**
- If it is proven that a private individual deliberately deceives a potential purchaser or tenant, then that individual should also be subject to potential prosecution  
**Helen Ainsworth, Harmony Homes Limited**
- This would not be in the interests of consumer protection. It would create a two tier market with the potential of amateur or unscrupulous Landlords resisting professional advice, management or professional regulation.

In the event the intention of this is to allow individuals to sell and rent their own individual property I agree with the proposals but it should not be a loophole for Vendors or Landlords operating a property business to avoid regulation or mislead a purchaser or tenant. **Charles C Garside**

- If we are considering misrepresentation or even fraud, why should an owner be in a "safer" position as compared with an agent?  
**Geoffrey P R Black, Black Grace Cowley Limited**
- No, the Department is of the opinion that consumers should be protected in the circumstances outlined, whether or not they are dealing with an estate agent.  
**Chief Executive, Department of Infrastructure**

- Individuals are ultimately responsible for the content of a property advertisement and to a degree they are also responsible for how an Estate Agent advertises their property, Vendors proof their details and therefore the blame has to lay in part at their door.

**Mark Canty, Cowley Groves & Co Limited**

### **OFT Response**

Most of the respondents were of the opinion that individuals selling or renting their own property should be covered by the misleading statement provisions. In light of the responses, the OFT will now revisit this issue.



## Question 5

Do you agree that consumers renting a property from a buy to let developer should have that same protection as if they were dealing with an estate agent? If not please explain why.

Total no. of respondents who made comment(s) = 10

Comment(s) summarised as	Number of respondents
Agree	10
Disagree	0

### Representative comments – Agree

- The consumer protection from a Developer, Estate Agent or Landlord (Who's source of income or business is property) should be equal. Inequality will only cause difficulties in the market place and encourage circumnavigation of regulation and adversely affect consumer protection. **Charles C Garside**

### OFT Response

The OFT will now look to make any changes necessary to ensure that consumers renting a property from a buy to let developer have the same protection as if they were dealing with an estate agent.

## Question 6

Do you agree the Estate Agents Tribunal should be permitted to make a complaint to the professional body of which the person is a member?

Total no. of respondents who made comment(s) = 10

Comment(s) summarised as	Number of respondents
Agree	10
Disagree	0

### Representative comments – Agree

- If dealing with a complaint direct to the OFT from a consumer, then the OFT needs to establish that the complainant has already complied with the estates/letting agents complaints handling procedures and redress scheme before further dissemination of such complaint is forwarded to their professional body  
**Helen Ainsworth, Harmony Homes Limited**
- Once again, we can envisage a situation where a young, newly qualified agent is placed "in control" of a business as part of his employment criteria, whilst, in reality, the business is operated by a non qualified owner. The ultimate owners of the estate agency business must be accountable to the OFT and general public.  
**Geoffrey P R Black, Black Grace Cowley Limited**
- I agree that the Tribunal should be permitted to make a complaint but only after the period of appeal has elapsed. **Norman Teare**

### OFT Response

The OFT will now look to make any changes necessary to enable the Estate Agents Tribunal to make complaints to professional bodies.

## Question 7

Where the Estate Agents Tribunal finds an allegation proved, do you agree that its decision should be published?

Total no. of respondents who made comment(s) = 10

Comment(s) summarised as	Number of respondents
Agree	8
Disagree	2

### Representative comments – Agree

- I agree that a decision of the Tribunal should be published but see no need for names not to be given **Norman Teare**

### Representative comment – Disagree

- This is a very difficult area, if serious breaches have occurred then the tribunal already has the power to levy penalties/sanctions. However any publication in the public domain could potentially damage or terminate a business' operations on less serious breaches that may occur. **Helen Ainsworth, Harmony Homes Limited**
- As much as it may be in the public's interest the consequences can be far greater than truly appreciated. For example; what if action is taken by the company to remove the said individual from his employment, the ultimate sacrifice to the person who is wrong yet the company itself rightly or wrongly is in the public eye without a contribution to the article published? The effects of such publicity can be catastrophic to a small business, I don't believe this to be correct. It would of course be case dependent but for all to be published could be short sighted. **Mark Canty, Cowley Groves & Co Limited**

### OFT Response

The OFT will now look to make any changes necessary to enable decisions of the Estate Agents Tribunal to be published where allegations are proven. In light of the responses, the OFT will give further consideration to the issue of effectively 'naming and shaming'.

## Question 8

Do you agree that all estate agents who engage in work relating to residential property should be members of an approved redress scheme?

Total no. of respondents who made comment(s) = 10

Comment(s) summarised as	Number of respondents
Agree	7
Disagree	3

### Representative comments – Agree

- As far as I understand, all estate agents must be members of an approved professional body (NAEA/RICS) etc. to practice on the Island. The NAEA already stipulate that their members must belong to an approved scheme of redress to retain their membership. This requirement should already be in place. **Helen Ainsworth, Harmony Homes Limited**
- Will the business owner be accountable to anyone?  
**Geoffrey P R Black, Black Grace Cowley Limited**
- Yes, but how does this apply to an RICS Regulated Firm here on Island? The Directors, employees etc and all RICS qualified individuals are already part of a redress scheme. Why be a member of two schemes? **Tim Groves, Black Grace Cowley Limited**
- I agree in principle but question how awards of a redress scheme whether one in the Isle of Man or the UK can be enforced. Amending legislation permitting, monetary awards if unpaid might be enforced as if they were judgements of the High Court but other awards, for example an estate agent having to take some course of action, would be more difficult to enforce unless they were to be referred to the Tribunal if the agent fails to comply. An alternative would be simply to give jurisdiction to the Tribunal to make monetary and other awards and for failure to pay or comply to be a disciplinary offence. **Norman Teare**

### Representative comment – Disagree

- It should be all property within the definition of the Estate Agent Act this should include mixed residential and commercial property again poor drafting could create a two tier system, confusion and dispute. It appears the focus is residential and not Estate Agency or Property Management combined with letting which is contrary to the fundamental narrative and definition within the original act. **Charles C Garside**
- The current bond system is adequate, but could be increased up to £150,000. Consumers are protected by Manx law. A redress scheme based on UK law is unnecessary.  
**D M Lowey, Lowey & Co**
- I don't believe this should be mandatory. **Mark Canty, Cowley Groves & Co Limited**

### OFT Response

The OFT is now of the opinion that, in this case, it is not possible to make use of section 62A of the Consumer Protection Act 1991 to apply UK provisions to the Island, however, it may be

possible to achieve the desired outcome, i.e. facilitating the use of approved redress schemes, by amending the Estate Agents Act 1975 to include necessary enabling provisions.

## Question 9

Do you agree that local estate agents should have the option of joining an approved UK redress scheme or setting up a separate local scheme?

Total no. of respondents who made comment(s) = 10

Comment(s) summarised as	Number of respondents
Agree	10
Disagree	0

### Representative comments – Agree

- Yes, and yes - local scheme obviously should match or be better than the UK scheme, and meet the requirements of what we are trying to do here. **R W Henderson MLC**
- A local scheme approved by the OFT would better reflect the local market requirements and would be better suited to interpretation under Manx judiciary, if so required.  
**Helen Ainsworth, Harmony Homes Limited**
- In the absence the legislation for regulating Estate Agents has been always ahead of that of the UK with the first Act being 1975 in contrast to the UK in 1979 and the continuance of professional qualifications in the 1978 Rules which is still absent from the UK. In addition there is a significant difference between Landlord and Tenant Land Law and Conveyancing between the Isle of Man and the UK. The absence of such an appreciation and demonstrated working case studies contributed to the difficulties experienced by the Landlord and Tenant Act 2013. I sincerely request mind fullness and professionalism in avoiding the inappropriateness of copy and paste. **Charles C Garside**
- With the proviso that such option is voluntary. **D M Lowey, Lowey & Co**
- What is the purpose of the OFT (relative to Estate Agency on the Isle of Man) if we are being able opt into a UK approved redress scheme? Again, the issue of duplication, fees, bureaucracy etc is important here. **Tim Groves, Black Grace Cowley Limited**
- I agree in principle but question how awards of a redress scheme whether one in the Isle of Man or the UK can be enforced. Amending legislation permitting, monetary awards if unpaid might be enforced as if they were judgements of the High Court but other awards, for example an estate agent having to take some course of action, would be more difficult to enforce unless they were to be referred to the Tribunal if the agent fails to comply. An alternative would be simply to give jurisdiction to the Tribunal to make monetary and other awards and for failure to pay or comply to be a disciplinary offence. **Norman Teare**
- I believe this to be the correct route to explore.  
**Mark Canty, Cowley Groves & Co Limited**

### OFT Response

The OFT will now look to make any changes necessary to give local estate agents the option of joining an approved UK redress scheme or setting up a separate local scheme.

## Question 10

Do you agree that all letting agents and property management agents should be members of an approved redress scheme?

Total no. of respondents who made comment(s) = 10

Comment(s) summarised as	Number of respondents
Agree	8
Disagree	2

### Representative comments – Agree

- They should operate under the same requirements as estate agencies  
**Helen Ainsworth, Harmony Homes Limited**
- It is unclear and potentially poorly drafted that if "Property Management" includes ground rent and service charge Block Management Agents. These Agents do not receive rental, they manage the structure, communal areas, insurance, cleaning which are essential services. They do not control client's money they are merely signatories to act on behalf of the Long Leaseholders who control and own the Management Company via their own appointed Directors. I believe this legislation is not appropriate for their duties and should not be confused with short term residential or commercial rental management. This is covered by the Property Service Charge Act 1989. \*This again could cause difficulty and confusion is not the matter is not properly defined and considered. **Charles C Garside**
- yes but it should be consistent with the Scheme the overall business opts into.  
**Tim Groves, Black Grace Cowley Limited**
- I agree in principle as regards letting agents but question if property managers should be covered at least in the situation where there is a block of leasehold apartments and a management company whose shareholders are the various apartment owners some of whom will also be directors. In that situation the company is entirely funded by such persons who rarely have any qualification that might be necessary to join a redress scheme. I think such management companies should be exempt as they are clearly not commercial and not carrying on business in the normal sense. **Norman Teare**

### Representative comment – Disagree

- The current bond system is adequate, but could be increased up to £150,000. Consumers are protected by Manx law. A redress scheme based on UK law is unnecessary.  
**D M Lowey, Lowey & Co**

### OFT Response

The OFT is now of the opinion that, in this case, it is not possible to make use of section 62A of the Consumer Protection Act 1991 to apply UK provisions to the Island, however, it may be possible to achieve the desired outcome, i.e. facilitating the use of approved redress schemes, by amending the Estate Agents Act 1975 to include necessary enabling provisions.

## Question 11

Do you agree that local letting agents and property management agents should have the option of joining an approved UK redress scheme or setting up a separate local scheme?

Total no. of respondents who made comment(s) = 10

Comment(s) summarised as	Number of respondents
Agree	10
Disagree	0

### Representative comments – Agree

- yes, but any local scheme should be as least as good as any UK scheme, and meet all the requirements we are proposing here **R W Henderson MLC**
- A local scheme that offers consumer protection to both estate and/or letting agents would be preferable, providing membership fees are not duplicated.  
**Helen Ainsworth, Harmony Homes Limited**
- With the proviso that such option is voluntary. **D M Lowey, Lowey & Co**
- I agree in principle as regards letting agents but question if property managers should be covered at least in the situation where there is a block of leasehold apartments and a management company whose shareholders are the various apartment owners some of whom will also be directors. In that situation the company is entirely funded by such persons who rarely have any qualification that might be necessary to join a redress scheme. I think such management companies should be exempt as they are clearly not commercial and not carrying on business in the normal sense. **Norman Teare**

### OFT Response

The OFT will now look to make any changes necessary to give letting agents and possibly property managers the option of joining an approved UK redress scheme or setting up a separate local scheme.