



Ministry of Housing,
Communities &
Local Government

Mandatory Client Money Protection Schemes for Property Agents

Government response



© Crown copyright, 2018

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at <http://www.gov.uk/mhclg>

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/mhclg>

April 2018

ISBN: 978-1-4098-5226-1

Contents

Contents	3
Introduction	4
Summary of consultation findings and Government response	6
Part A: Approval and conditions for scheme providers	6
Part B: Conditions on property agents	9
Part D: Enforcement	10
Next Steps	13
List of organisational responses	14

Introduction

- 1 The Housing and Planning Act 2016 introduced powers to bring in legislation making membership of an approved or designated client money protection (CMP) scheme mandatory for property agents in the private rented sector.
- 2 CMP schemes give landlords and tenants confidence that their money is safe when it is being handled by an agent. Where an agent is a member of a CMP scheme, it enables a tenant or landlord to recover any money held by the agent on that person's behalf that the agent fails to repay—for example due to misappropriation or insolvency.
- 3 The industry estimates that letting agents currently hold approximately £2.7 billion in client funds.¹ These monies are frequently rent payments to landlords but can also include monies held by agents for repairs and maintenance to the property. Membership of a CMP scheme is not currently mandatory but it is estimated that around 60% of agents are already members of such a scheme.²
- 4 We invited Baroness Hayter and Lord Palmer of Childs Hill to chair a working group to review how CMP schemes work in the lettings sector and whether to make membership of such schemes mandatory. The review found that awareness of CMP is low, despite the transparency requirements introduced in the Consumer Rights Act 2015, which require agents to publicise whether or not they are a member of a CMP scheme.
- 5 Following the report of the Working Group, the Government announced its intention to accept the recommendation to make membership of a Government approved or designated scheme mandatory.
- 6 We published a consultation on 1 November 2017 seeking views on the implementation, design and enforcement of mandatory CMP. The consultation closed on 13 December 2017 and received 117 responses from a range of stakeholders, including letting agents, tenants, landlords and local authorities. A breakdown by type of respondents is included below:³

Tenant	10%
Leaseholder	2%
Landlord	12%
Letting or managing agent	42%
Organisation representing tenants	2%
Organisation representing landlords	3%
Organisation representing letting and/or managing agents	5%
Provider of management or other services to tenants or leaseholds	2%
Client Money Protection scheme provider	2%
Insurance provider	3%

¹ Working Group on Client Money Protection, [Final report](#), March 2017 para 23

² Working Group on Client Money Protection, [Final report](#), March 2017 para 29

³ Please note that due to rounding the percentages do not add up to 100%.

Local authority	6%
Other	13%

- 7 We are grateful to all those who took the time to respond. This document summarises the responses to the questions raised in the consultation, provides the Government's response and outlines the next steps.

Summary of consultation findings and Government response

Part A: Approval and conditions for scheme providers

Q1. Consultation findings

Q1. Do you think that client money protection schemes should be a) 'market led' - approved by government in order to operate (similar to the redress and tenancy deposit protection schemes); b) administered by a government body designated by the Secretary of State; or c) a mixture of a government administered scheme and government approved schemes?

	In favour
a) Be 'market led' - approved by government in order to operate (similar to the redress and tenancy deposit protection schemes)	63%
b) Be administered by a government body designated by the Secretary of State	19%
c) A mixture of a government administered scheme and government approved schemes	18%

The findings indicate that the majority of the respondents were in favour of a market-led approach, where CMP schemes are private and approved by government. Respondents in favour of this approach believed that this was most appropriate as there are already several CMP schemes operating effectively in the market and a similar model has worked well for redress and tenancy deposit schemes. Respondents also noted that a market-led approach would enable competition and keep CMP cover affordable.

Those who were in favour of a government-administered body felt it would provide more accountability. Respondents who supported a mixture of a government administered and approved schemes felt it would provide agents with a choice, particularly for those who are unable to join a CMP scheme through a professional body.

Q1. Government response

We agree that a market-led approach is the most suitable. There are currently several CMP schemes operating in the market and the majority of agents in the private rented sector are a member of one of these schemes. In order to ensure consistency in standards across scheme providers, we will require schemes to be approved in order to operate. This will guarantee that landlords and tenants are adequately protected, regardless of the CMP scheme their agent chooses to join.

The legislation will allow for the government to designate a government-administered CMP scheme. The government does not intend to create such a scheme at this time as it believes there is sufficient market provision. However, this provision protects agents—and their tenants and landlords—by enabling the government to maintain CMP provision in the unlikely event that it is otherwise at risk.

Q2a & Q3. Consultation findings

Q2a. Apart from the necessary requirement upon scheme providers to produce a certificate to enable a property agent to comply with s.133(3), should the government mandate: any requirements for a CMP scheme to be approved/designated and the conditions which must be complied with by scheme providers?

Q3. If requirements for a client money protection scheme to be approved/designated are mandated by government, what do you think these should include? Where appropriate please specify financial amounts (e.g. in reference to minimum levels of cover and policy excesses).

Q2a	In favour
Any requirements for a CMP scheme to be approved/designated	77%

A large majority of respondents agreed that the government should mandate requirements for a CMP scheme to be approved or designated. Respondents proposed a range of requirements for approval including that schemes should:

- acquire adequate cover related to the amount of money held;
- provide a run-off limit from the date of the case occurring for consumers to make a claim;
- be required to take out an insurance policy from a provider who is FCA approved;
- ensure members have professional indemnity insurance and segregated client accounts, with proper recording practices;
- not impose an excess or a charge on the consumer when making a claim; and
- have a stringent claims process in place.

Q2a & Q3. Government response

We agree that schemes should be required to meet a set of requirements in order to receive approval to ensure that all agents are receiving an adequate level of protection. To obtain approval, scheme providers will be required to:

- secure appropriate insurance in relation to the size and number of scheme members and amount of client money held, ensuring that schemes can operate effectively;
- maintain clear claims handling procedures and respond to claims as soon as reasonably practicable, without any deduction on the part of the client;
- accept claims for at least twelve months after the date of a case occurring, ensuring landlords' and tenants' money remains protected in the event that their agent is no longer covered or goes out of business;
- ensure their members meet the necessary conditions for handling client money.

'Necessary conditions' here include maintaining transparent procedures for handling client money, holding client money in a segregated client account and holding adequate professional indemnity insurance cover. Requiring their members to have professional indemnity insurance will ensure that schemes are able to operate effectively without being overwhelmed by claims related to employee fraud. This could cause a substantial increase in the cost of premiums and scheme membership. Moreover, if only some schemes required agents to have professional indemnity insurance, there is a risk that some landlords and tenants will find that the level of cover is lacking when needed. This requirement mitigates that risk.

Q2b & Q4. Consultation findings

Q2b. Apart from the necessary requirement upon scheme providers to produce a certificate to enable a property agent to comply with s.133(3), should the government mandate: any requirements for a CMP scheme to be approved/designated and the conditions which must be complied with by scheme providers?

Q4. If the conditions which must be complied with by scheme providers are mandated by government, what do you think these should include? Where relevant please specify any financial amounts.

Q2b	In favour
The conditions which must be complied with by scheme providers should be mandated by the government	62%

The majority of respondents were in favour of the government mandating conditions which scheme providers must comply with. Conditions suggested included:

- monitoring number of members, amount of client money held and number of claims; and reporting on these to the Department;
- sharing data with other CMP schemes, redress schemes, tenancy deposit schemes and Trading Standards;

- performance-related requirements such as the time taken to assess claims; and
- transparency requirements including providing members with a certificate of membership, publicly displaying details of members and notifying clients when an agent no longer has CMP cover or has not renewed it.

Q2b & 4. Government response

The Government supports the view that scheme providers should comply with various conditions during their operation to ensure landlords, tenants and agents are receiving the same level of service across providers. Scheme providers will be required to:

- provide each scheme member with a certificate confirming their membership;
- share information with the Department on the operation of the scheme on a quarterly basis. This will allow government to monitor the effectiveness of the schemes;
- share data with other approved CMP schemes, redress schemes, tenancy deposit schemes and local authorities involved in enforcement of the requirement. This will ensure compliance can be checked;
- provide the Department with confirmation of any renewal of its insurance policy.

Part B: Conditions on property agents

Q5 & 6. Consultation findings

Q5. Do you think that the regulations should impose any requirements about the nature of client money protection scheme membership that a property agent must obtain?

Q6. If the regulations impose requirements about the nature of client money protection scheme membership that a property agent must obtain, please specify what you think such requirements should include (detailing financial amounts where appropriate).

Q5	In favour
Yes, regulations should impose requirements	82%
No, regulations should not impose requirements	18%

The findings show that majority of the respondents were in favour of regulations imposing requirements on the nature of CMP scheme membership obtained by a property agent. Respondents felt that this was needed to ensure agents acquire sufficient cover and that all client money is protected. Some respondents noted that the cover should relate to the amount of money held but that it should be left to the scheme providers to set the level of cover needed based on an assessment of risk. Respondents also suggested agents

should be required to belong to a professional body and be a member of a redress scheme.

Q5 & 6. Government response

We are keen to ensure that landlords and tenants all receive an adequate level of protection. That is why we are requiring agents to be a member of an approved scheme and to take out sufficient cover related to the amount of client money held.

Scheme providers will be required to ensure their members have professional indemnity insurance and segregated client accounts to ensure appropriate handling of client money.

Agents will also be required to adhere to the transparency requirements. This includes displaying details of scheme membership, informing clients when they no longer have CMP cover or when it becomes a member of a different approved CMP scheme. We intend to use the Tenant Fees Bill to amend the Consumer Rights Act 2015 to state that agents must not only display whether they have CMP but also the name of their provider, which will provide further transparency.

We will not require agents to belong to a professional body or to be a member of a redress scheme in order to obtain CMP membership. Lettings agents are already required to be member of one of the three Government-approved redress schemes. We have also committed to regulating agents and as part of this agents will have to comply with legal requirements, of which one will be membership of a CMP scheme.

Part D: Enforcement

Q7. Consultation findings

Q7. Enforcement of the requirement to be a member of a client money protection scheme will be carried out by local authorities. Do you think that responsibility should be at District Council level i.e. local housing authorities or County Council level i.e. Trading Standards?

	In favour
District Council level i.e. by local housing authorities	20%
County Council level i.e. Trading Standards	74%

The majority of the respondents felt enforcement responsibility should sit at the County Council level i.e. with Trading Standards. Respondents felt that Trading Standards would have the necessary skills and experience to enforce this requirement. Respondents noted the resource constraints of Trading Standards and agreed with the proposal to allow Trading Standards to retain money collected from civil penalties to fund enforcement.

A few stakeholders chose neither option as they felt enforcement should fall primarily with Trading Standards but that there should be flexibility for enforcement by local housing authorities.

Q7. Government response

The Government agrees that enforcement responsibility should sit at the County Council level to ensure consistency of enforcement with other letting agent regulation. Local authorities are, however, able to discharge their enforcement responsibility to other tiers. This will allow flexibility for enforcement by local housing authorities.

We are keen to support local authorities with their enforcement responsibilities. We note the concerns raised regarding the resources available to local authorities and will allow them to retain monies collected from civil penalties to fund future enforcement. We have also proposed to establish a lead enforcement authority to provide oversight, guidance and support with the enforcement of relevant letting agent legislation, including mandatory membership of a CMP scheme.

Q8. Consultation findings

Q8. Do you think that the penalty for non-compliance with the requirement to be a member of a client money protection scheme should be a) a civil penalty of up to £5,000 in line with the penalty for non-compliance with the requirement to belong to a Government-approved redress scheme or non-compliance with the transparency requirements of the Consumer Rights Act 2015; b) a civil penalty of up to £30,000 in line with the civil penalty for committing a banning order offence; or c) other?

	In favour ⁴
a civil penalty of up to £5,000 in line with the penalty for non-compliance with the requirement to belong to a Government-approved redress scheme or non-compliance with the transparency requirements of the Consumer Rights Act 2015	25%
a civil penalty of up to £30,000 in line with the civil penalty for committing a banning order offence	47%
Other (please specify)	27%

The findings suggest that a large number of respondents are in favour of a civil penalty up to £30,000. A number of respondents suggested alternative penalties including banning orders or the threat of a criminal sanction.

⁴ Please note that due to rounding the percentages do not add up to 100%.

Q8. Government response

We recognise that a robust and effective enforcement is essential to the successful implementation of mandatory CMP. A civil penalty of up to £30,000 will act as a significant deterrent to agents.

We do not agree that operating without membership of a CMP scheme should be a banning order or criminal offence. The Working Group found that failure of agents to join a scheme is likely to be due to lack of awareness or cost concerns rather than criminal intent. Creating a new criminal offence for non-compliance would be disproportionate. The powers in the Housing and Planning Act 2016 do not provide for the creation of a criminal offence of operating as a property agent without client money protection or enable such agents to be shut down.

We are keen to improve standards across the sector and ensure agents are providing an adequate service to landlords and tenants. That is why we have committed to regulating letting agents, requiring them to satisfy minimum training requirements and to follow a code of practice.

Q9. Consultation findings

Q9. Please provide any further comments or concerns that you have regarding the implementation and enforcement of mandatory client money protection scheme membership that have not been covered in this consultation document.

Various additional comments were raised regarding the implementation of mandatory CMP. Some respondents felt small businesses should be exempt from the requirement to be a member of an approved CMP scheme, whilst others felt it should apply more widely to include landlords who let properties directly, and agents in the leasehold sector.

Respondents also noted the need to consider the policies as part of the wider regulation of letting agents and other letting agents' policies, such as the ban on tenant fees.

Q9. Government response

We are committed to ensuring all consumers are protected regardless of which agent they or their landlord choose. Larger agents tend to be members of professional organisations which require CMP scheme membership as part of the membership package. Small businesses are therefore less likely to have CMP cover than larger agents. It is therefore important to include small businesses in the mandatory requirement to ensure consumers' money is protected, regardless of the size of the firm.

The requirement will only apply to agents that handle client money. Agents that are unable to obtain CMP would still be able to trade but would not be able to handle client money, for example the tenant would pay the rent directly to the landlord.

The regulations will only apply to letting and property managing agents in the private rented sector. In the leasehold sector, landlords and managing agents are expected to comply with the existing legislation regarding holding service charges and the Codes of Management Practice.

The intention is for mandatory CMP to come into force before the ban on tenant fees. This is to ensure that consumers are protected and that client money is not lost in the instance of any agent going out of business, as a result of the ban.

Next Steps

We will be laying two affirmative regulations in Parliament as soon as parliamentary time allows. The first instrument will set out of the process and conditions for approval of scheme providers. The second instrument will impose a requirement on property agents to join an approved/designated scheme and make provision for the enforcement of the duty.

Further information will provided about the process for scheme providers to apply for government approval in due course.

List of organisational responses

Please note that this is a list of larger national or regional organisations that submitted organisational responses. Submissions from individual branches or directors of companies have not been included here, though they were fully considered as part of the consultation.

ARLA Propertymark	LGA
ARMA	London Borough of Tower Hamlets
Arthur J Gallagher	Lonsdale Insurance Brokers
Association of Chief Trading Standards Officers	NALS
British Property Federation	NLA
Central Association of Agricultural Valuers	Ombudsman Services
City and County of Swansea Trading Standards	RLA
City of Wolverhampton Trading Standards	SafeAgent
CMProtect	Shelter
Deposit Protection Service	Tenancy Deposit Scheme
Federation of Private Residents Associations	The Guild of Letting & Management Limited
Guild of Residential Landlords	The Letting Partnership
Harrow Council	TPO
Leicestershire Trading Standards	UKALA