



Department for
Communities and
Local Government

Mandatory Client Money Protection Schemes for Property Agents

Consultation



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Scope of the consultation

Topic of this consultation:	This consultation seeks views on the implementation of mandatory membership of a client money protection scheme for property agents.
Geographical scope:	These proposals relate to England only.
Impact Assessment:	The proposals under consideration are expected to result in low costs to the sector and, as such, a Regulatory Impact Assessment is not required at this stage. The consultation document highlights that membership of a client money protection scheme generally costs an agent between £300 and £500 a year depending on the size of the firm and the amount of money held in client accounts.

Basic information

Duration:	This consultation will last for 6 weeks from 1 November 2017 until 13 December 2017.
Enquiries:	For any enquiries about the consultation please email lettingagentsteam@communities.gsi.gov.uk
How to respond:	<p>You may respond by completing an online survey at: https://www.surveymonkey.co.uk/r/clientmoneyprotection</p> <p>This is the preferred method for responding to this consultation.</p> <p>Alternatively you can email your response to the questions in this consultation to lettingagentsteam@communities.gsi.gov.uk</p> <p>If you are responding in writing, please make it clear to which questions you are responding.</p> <p>Written responses should be sent to: Housing Standards Team, Better Rented and Leasehold Sector Division, 3rd Floor, Fry Building, 2 Marsham Street, London SW1P 4DF</p> <p>When you reply please indicate whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> - your name, - your position (if applicable), - the name of organisation (if applicable), - an address (including post-code), - an email address, and - a contact telephone number

Introduction

1. The private rented sector is an important part of our housing market. It is the second largest tenure in England, housing 4.5 million households (20% of all households)¹. The Government is committed to driving up standards, supporting good landlords and agents and providing security and stability for tenants.
2. Property agents provide a valuable service in ensuring that properties are safe, compliant and professionally managed; they help landlords comply with their legal responsibilities and help tenants secure safe and good quality homes.
3. Landlords and tenants frequently pay money to agents to handle on their behalf. These monies are normally rental payments but can also include monies held for repairs and maintenance to the property. The industry estimates that property agents currently hold approximately £2.7 billion in client funds.²
4. Client money protection 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 client money protection scheme, it enables a tenant, landlord or both to be compensated if all or part of their money is not repaid (examples of this may include an agent going into administration or misappropriating funds). For the avoidance of doubt, the concept of 'client monies' in this context does not include tenancy security deposits, which must always be held in a Government-approved tenancy deposit scheme.
5. Membership of a client money protection scheme is not currently mandatory but it is estimated that around 60% of agents are already members.³ Agents pay a membership fee (typically around £300-£500 a year) to join a scheme, often as part of wider professional association membership.
6. If an agent is not a member of a client money protection scheme, clients (either the landlord, tenant or both) risk losing their money in the event of the agent defaulting on its obligations.
7. The Government took powers in the Housing and Planning Act 2016 to allow for regulations to be brought in making membership of an approved/designated client money protection scheme mandatory for all property agents.
8. In connection with this, the Government invited Baroness Hayter and Lord Palmer of Childs Hill to chair a working group to review how client money protection schemes work in the lettings sector and whether to make membership of such schemes mandatory. The [report](#) was published on 27 March 2017.

¹ English Housing Survey 2015-16

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/603365/Client_Money_Protection_Working_Group_Report.pdf

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/603365/Client_Money_Protection_Working_Group_Report.pdf

9. Following the report of the Working Group, the Government announced its intention to accept the recommendation to make scheme membership mandatory to ensure that each and every agent is giving tenants and landlords the financial protection that they want and deserve.
10. This consultation paper invites views and comments on how membership of mandatory client money protection schemes in England should be designed, implemented and enforced.

Current legislative framework

11. Currently, anyone can operate as a letting agent without any qualifications or professional oversight. As announced on 1 October 2017, we will change the law so that all letting agents must register with an appropriate organisation. This will mean that letting agents would be required to satisfy minimum training requirements, abide by an industry code of conduct in order to practice and comply with all existing legal requirements.
12. Membership of a client money protection scheme is not currently mandatory. The Government encourages firms to join schemes and encourages landlords and tenants to choose agents who are members of a client money protection scheme. It is estimated that around 60% of agents already have membership of a scheme. Professional bodies require agents to join a client money scheme as part of their eligibility criteria.
13. The Housing and Planning Act 2016 permits the Secretary of State to bring in legislation requiring that letting agents in England be a member of:
 - A client money protection scheme that is approved by the Secretary of State; or
 - A client money protection scheme that is Government-administered and designated by the Secretary of State as such.
14. The Housing and Planning Act permits the Secretary of State when bringing in such legislation to impose requirements on scheme providers as to the nature of the scheme, about how applications should be made for approval/designation and the conditions which must be satisfied as well as the conditions which scheme providers must comply with.
15. The Secretary of State may also impose requirements on property agents about the type of membership that a property agent must obtain.
16. Any legislation brought in shall include an obligation upon the property agent to act transparently by requiring it to:
 - obtain a certificate confirming its membership of the scheme;
 - display or publish the certificate; and
 - produce a copy of the certificate on request.
17. Based on the above, the Government intends to make regulations to require letting and property managing agents to be members of an approved or government-administered designated client money protection scheme.
18. The requirement to be a member of a scheme and the proposed wider regulation of letting agents complements and supports existing regulation in the sector.

19. Since October 2014, letting and managing agents have been required to be members of a Government approved redress scheme. The three redress schemes are Ombudsman Services: Property; the Property Redress Scheme; and the Property Ombudsman. The redress schemes are independent bodies to which tenants and landlords in the private rented sector can complain about the service that they have received from a letting or managing agent and seek a resolution without going to court.
20. The Consumer Rights Act 2015 introduced requirements on letting agents to publicise a full tariff of their fees, to make clear whether or not they are a member of a client money protection scheme and of which redress scheme they are a member, prominently in their offices and on their website. The aim was to improve transparency in the lettings market to support tenants and landlords in their decisions around which agent to use. A fine of up to £5,000 can be levied against agents who fail to comply.
21. Further, where landlords, or agents acting on their behalf, ask a tenant for a security deposit, they are required by law to protect this deposit in a Government-approved tenancy deposit scheme. Tenancy deposit protection schemes ensure that tenants will get their deposit back if they meet the terms of their tenancy agreement. If an agent goes into administration the deposits are returned to the tenant not the landlord.
22. On 6 April 2017 the Government brought in a range of tougher measures to target rogue landlords and agents, including civil penalties and an extension of rent repayment orders. Over this Parliament the Government will go further by introducing banning orders, a database of rogue landlords and agents and regulating letting agents.
23. The Government announced its intention at the Autumn Statement 2016 to ban letting fees paid by tenants and carried out a public consultation to inform how the ban should be implemented and enforced. The proposed approach will be set out in the draft Tenant Fees Bill.

Working Group report and recommendations

24. The Government launched a call for evidence in Autumn 2016 on the use of client money protection schemes in the private rented sector and invited Baroness Hayter and Lord Palmer of Childs Hill to chair a working group to decide on whether it would be appropriate to recommend mandating the use of such schemes for all letting and managing agents.
25. The Working Group was supported by the Department for Communities and Local Government and included experts from the insurance, housing and enforcement sectors. It considered written and oral evidence from a wide range of stakeholders and the majority of evidence suggested that stakeholders (including the sector) are in favour.
26. There were 54 respondents to the call for evidence from across the lettings sector including local authorities, trading standards, the police, professional bodies for the property industry, landlord bodies, consumer and tenant organisations, landlord and tenant solicitors firms and tenancy deposit and redress schemes. 85% of the survey responses supported mandatory client money protection scheme membership, arguing that it would improve the reputation and professional standards in the industry.
27. In their report, the Working Group made ten recommendations:
 1. 'The Government uses its powers in the Housing and Planning Act 2016 to make client money protection mandatory and gives further consideration as to how to manage implementation and enforcement.
 2. Minimum terms and conditions of cover and agreed standards are dictated either by Government or a lead enforcer to ensure that schemes are consistent in their approach, underwriting and claims pay-outs.
 3. Enforcement is by local authorities, primarily Trading Standards but with flexibility to allow enforcement by local authority private sector housing teams that have regular contact with landlords, letting agents and tenants.
 4. Providers of client money protection, redress schemes and Trading Standards share information to ensure that compliance can be checked.
 5. The Government considers authorising a prime authority for enforcement, recognising client money protection schemes and providing up to date information. This authority should hold information that can be shared with other relevant organisations on which agents are compliant with the requirement to trade with client money protection.

6. If an agent is found to be handling client money without having client money protection, they should be fined or shut down. Agents who receive fines for non-compliance should not be permitted to continue to handle client money.
7. The Government, or its appointed authority, should issue guidance and ensure sufficient communications to support implementation.
8. British Bankers Association in liaison with the Government to produce guidance for banks on enabling the opening of client bank accounts without the need for evidence of due diligence on individual landlords.
9. Measures on client money protection are linked to the work underway on the ban on letting agent fees for tenants. Any other changes to the sector should be considered in the round and implemented in a sensible and coherent way.
10. Implementation of mandatory client money protection should be done on a transitional basis.'

Implementation of mandatory client money protection scheme membership

28. The Government announced on 28 March 2017 that it intends to use the powers in the Housing and Planning Act 2016 to make membership of an approved/designated client money protection scheme mandatory, in line with the Working Group's first recommendation. This will help to raise standards across the sector and operate as a tool to tackle rogue agents. It will ensure that each and every agent is offering the same minimum level of protection to boost consumer confidence.
29. As the Working Group's report notes, there continue to be examples of property agents misappropriating client funds or using them fraudulently and then disappearing, leaving both landlords and tenants unable to recover their funds. Mandatory membership of an approved/designated scheme will give consumers the financial protection that they want and deserve. It will also bring the sector into line with others where client money is held, for example the legal profession and travel operators.
30. Membership of a scheme will only be mandatory for those agents handling client money. A property agent could still operate but not receive client monies, for example the tenant would pay rent directly to the landlord.
31. Agents that handle client money will be required to belong to a scheme. Cover generally costs between £300 and £500 a year depending on the size of the firm and the amount of money held in client accounts.

Approval or designation and terms and conditions of client money protection cover schemes

32. The Government agrees with the Working Group that client money protection schemes should be consistent in their coverage and sufficiently underwritten and has a choice as to how to achieve this.
33. One option is to require all schemes to be approved by Government, similarly to the approval of tenancy deposit protection and redress schemes. Schemes would only be approved and able to operate if they met specific criteria and standards. Requiring scheme providers to demonstrate that they are meeting minimum standards and providing sufficient cover would guarantee consumers an appropriate standard of protection.
34. The alternative would be to set up a government-administered client money protection scheme to be designated by the Secretary of State. However, this option may be less preferable given that there are already a number of schemes operating in the market, providing property agents with choice.

35. The Secretary of State can specify how applications should be made for approval/designation and the conditions, which must be satisfied as well as conditions which scheme providers must comply with. Terms and conditions specified by Government could include:
- a. Underwriting capacity;
 - b. Publicity requirements and data protection requirements (scheme providers will in any event need to provide a certificate for members, per s.133(3) the Housing and Planning Act 2016);
 - c. Minimum levels of insurance cover and limited policy excesses;
 - d. Consumers to be repaid on demand, in timely manner and without deduction in circumstances where the scheme applies;
 - e. Insurance to cover theft of client monies as well as misappropriation and insolvency; and
 - f. Financial Conduct Authority approval.
36. Linked to this, the Government would look to include provisions to allow approval/designation to be revoked or withdrawn for failure by providers to comply with any mandatory terms of a scheme and would include provisions as to the consequences of such revocation/withdrawal.
37. Assessing whether a property agent is eligible for coverage will be the responsibility of scheme providers who as part of their due diligence checks on potential members may check whether an agent operates segregated client accounts so that funds do not register as an asset of the firm, and is compliant with all relevant legal requirements, (for example membership of a redress scheme) and has professional indemnity insurance.
38. However, the Housing and Planning Act also enables the Secretary of State to make regulations that impose requirements about the nature of membership of a client money protection scheme that a property agent must obtain. For example, dependent upon the size of business that a property agent is operating (and therefore the sums of money they are likely to hold), property agents may be required to obtain a particular level of insurance, in order to ensure that all the money they hold is adequately protected.
39. The Government is keen to ensure the right balance on standards so that agents can get competitively priced cover and new entrants are not deterred from entering the market whilst at the same time protecting consumers from riskier agents.
40. As the Working Group recognised, permitting new providers of client money protection schemes to enter the market would increase capacity to help cater for the additional demand that mandating the cover will create. The increased competition should also work to manage the cost to agents.
41. The Government agrees with the Working Group that agents should not be required to have a minimum number of years' experience in order to be eligible for membership of a client money protection scheme. Scheme providers will

need to satisfy themselves that new firms have sufficient knowledge to operate effectively. This could be demonstrated through relevant work experience or formal qualifications, or agents could use a custodial scheme for rents initially.

Enforcement

42. The Government recognises that robust and effective enforcement is essential to the successful implementation of mandatory client money protection scheme membership. Enforcement should be a tool to deter agents who handle client money from failing to obtain cover.
43. The Government agrees with the Working Group that mandatory scheme membership should be enforced by local authorities. This is set out in s.135 of the Housing and Planning Act and builds on the existing work of local authorities in the sector, notably enforcing the requirement for letting and managing agents to belong to a redress scheme and the transparency requirements of the Consumer Rights Act 2015.
44. The Housing and Planning Act states that the enforcement authority for the purposes of mandatory client money protection scheme membership is:
 - a. district council,
 - b. a county council for an area for which there is no district council,
 - c. a London borough council,
 - d. the Common Council of the City of London, or
 - e. the Council of the Isles of Scilly.
45. The Government wants to understand if it is right for enforcement responsibility to sit at district council level or whether county councils, namely Trading Standards, would be better placed to enforce the client money protection requirements.
46. The Government recognises the concern over the resources available to local authorities and proposes to support local authorities in their responsibilities by enabling any monies recovered through civil penalties to be retained and used for future enforcement in the private rented sector.

Data sharing

47. Better data and intelligence sharing across the sector will also help to assist enforcement. There is already some sharing of information between professional bodies, local authorities and the redress schemes, for example the redress schemes notify local authorities if an agent has been expelled from their scheme. The benefit of greater data sharing is that it makes it harder for rogue agents to continue to operate.
48. The Government agrees with the Working Group that providers of client money protection, redress schemes and Trading Standards should have mechanisms to share information to ensure that compliance with the requirement to have

mandatory client money protection can be checked. Such data sharing will be in accordance with data protection legislation.

49. Under the transparency requirements in the Consumer Rights Act, letting agents are required to display in their offices, or publish on their website, whether they are a member of a client money protection scheme. The Government proposes to use the Tenant Fees Bill to amend the transparency requirements to specify that agents must also display the *name* of their scheme provider.
50. Scheme providers should publish a list of members on their respective websites making it possible for landlords and tenants to check whether a letting or management agency is a current member of one of the schemes.

Lead enforcement body

51. The Working Group recommended the appointment of a lead enforcement body to manage enforcement of mandatory client money protection scheme membership and have responsibility for developing advice, standards and guidance.
52. The lead authority approach is used in the Estate Agent sector. The National Trading Standards Estate Agency Team (NTSEAT), hosted by Powys County Council, is designated by the Secretary of State as the UK's lead enforcement authority for the purposes of the Estate Agent Act 1979.
53. In the recent consultation 'Banning Letting Fees paid by Tenants' the Government asked '*Would you support the introduction of a lead enforcement authority for letting agents to develop advice, standards and guidance and to share information?*' There was strong support with 86% of respondents answering yes. As a result, the Government intends to introduce, through the Tenant Fees Bill, a lead enforcement authority. This body is proposed to have enforcement powers as well as responsibility for providing guidance and support to local authorities to carry out their responsibilities regarding the operation and enforcement of relevant letting agent legislation, including mandatory membership of a client money protection scheme.

Sanctions for non-compliance

54. Section 135 of the Housing and Planning Act 2016 permits the Secretary of State to include an enforcement mechanism in any Regulations and permits a financial penalty to be levied on agents who fail to comply with the requirement to be a member of an approved/designated client money protection scheme.
55. The Government believes that a financial penalty is the appropriate sanction for non-compliance. This is in line with the enforcement mechanism for failing to comply with the requirement on agents to belong to a redress scheme and failure to comply with the transparency requirements in the Consumer Rights Act 2015. Local authorities can impose a civil penalty of up to £5,000 where a letting or managing agent does not comply with these requirements.

56. The Government recognises that there does need to be a sufficient deterrent to agents not being a member of an approved/designated scheme and is therefore interested in understanding whether a financial penalty of up to £30,000 (in line with the new civil penalties for housing offences introduced on April 6 2017 under the Housing and Planning Act 2016) would be more appropriate than a civil penalty of up to £5,000.
57. The Government does not propose to accept the recommendation of the working group that operating without membership of a client money protection scheme should be a banning order offence so that such agents could not trade.
58. The powers in the Housing and Planning Act 2016 do not provide for agents without client money protection cover to be shut down; the enforcement mechanism is a financial penalty, which is in line with the penalty for agents not belonging to a redress scheme, and not for a criminal offence. Creating a new criminal offence for non-compliance would be disproportionate. 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. Non-compliant agents could be issued with repeated financial penalties.
59. As announced on 1 October, the Government intends to require that all letting agents must register with an appropriate organisation in order to trade. This will mean that letting agents would be required to satisfy minimum training requirements, abide by an industry code of conduct in order to practise and comply with all existing legal requirements. Once client money protection scheme membership is mandated, non-compliant agents would not be permitted to operate until they obtain cover since being a member of a scheme will be a requirement to trade.

Communications and timetable for implementation

60. The Working Group found, through their call for evidence, that understanding and awareness of client money protection schemes is low; tenants and landlords tend to trust their letting and managing agents and assume that they are regulated by the law. The Government agrees with the Working Group that good communication is a priority to ensure successful implementation of mandatory client money protection scheme protection.
61. Making membership of an approved/designated scheme mandatory will help to improve tenant and landlord awareness and will remove confusion for those who think the protection applied to deposits also applies to other “client monies” such as rent.
62. The Government will continue to encourage letting and managing agents to join client money protection schemes and landlords and tenants to choose agents with such membership via the [Safe Agent Kite Mark](#). To support the move to a mandatory system, the Government will proactively communicate the change using gov.uk channels, updating its ‘How to Rent’ guidance as well as its proposed ‘How to Let’ guide to stress that all letting and managing agents must

become members of an approved scheme and providing guidance to tenants and landlords on checking that their agent is compliant.

63. The Government agrees with the Working Group that legislative changes to the lettings sector should be considered in the round and implemented in a sensible and coherent way. As such, the Government proposes to link measures on client money protection to the work underway on the ban on letting fees for tenants and greater regulation of letting agents
64. The Government will also ensure that agents and scheme providers have a notice period to become compliant with the new requirements. This will help to minimise the impact and also not discourage new firms from setting up.

Questions

When you reply please indicate whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name
- the name of organisation (if applicable),
- the capacity in which you are responding to the consultation e.g. as a tenant, landlord, property agent, insurance provider etc.

Question 1	Answer a) or b) or c) + reasons
<p>Do you think that client money protection schemes should:</p> <ul style="list-style-type: none"> a. Be 'market led' - approved by Government in order to operate (similar to the redress and tenancy deposit protection schemes); b. Be administered by a government body designated by the Secretary of State; c. A mixture of a government administered scheme and government approved schemes? 	

Question 2	For parts a) and b) Yes/no + reasons
<p>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:</p> <ul style="list-style-type: none"> a. Any requirements for a client money protection scheme to be approved/designated? b. The conditions which must be complied with by scheme providers? <p>Please provide reasons</p>	

Question 3	Answer
<p>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).</p>	

Question 4	Answer
<p>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.</p>	

Question 5	Yes/No + Reasons
<p>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?</p> <p>(For example, dependent upon the size of business that a property agent is operating (and therefore the sums of money they are likely to hold), property agents may be required to obtain a particular level of insurance, in order to ensure that all the money they hold is adequately protected.)</p> <p>Please provide reasons</p>	

Question 6	Answer
<p>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).</p>	

Question 7	a) or b) + reasons
<p>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:</p> <p>a. District council level i.e. by local housing authorities</p> <p>b. County Council level i.e. Trading Standards?</p>	

Question 8	a) b) or c)
<p>Do you think that the penalty for non-compliance with the requirement to be a member of a client money protection scheme should be:</p> <ul style="list-style-type: none"> 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; c. Other (please specify) 	

Question 9	Answer
<p>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.</p> <p>If you have nothing further to add please skip this question.</p>	