

Draft subject to parliamentary approval



Ministry of Housing,
Communities &
Local Government

Applying to become an approved client money protection scheme

Draft guidance for prospective schemes



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1. Introduction

1.1 Status of the guidance

The first version of the guidance for client money protection schemes was published in July 2018. This version of the guidance is being published in draft to support client money protection schemes in understanding the recent proposed amendments to client money protection legislation as it applies to client money protection schemes and property agents in the private rented sector through the Tenant Fees Bill.

Although these amendments were approved by the House of Lords on 11 December, they are still subject to consideration by the House of Commons, final parliamentary approval and Royal Assent. They are therefore subject to change. Where elements of the guidance are still the subject of parliamentary approval and open to change, the text is italicised.

This version of the guidance also contains some small clarifications based on the experience of initial applications from client money protection schemes.

1.2 Background

The private rented sector is an important part of our housing market, with 4.7 million households in England¹. The sector has undergone rapid growth over the last ten years. It is the second largest tenure in England, representing 20 per cent of all households in England.

Property agents provide a valuable service in ensuring that properties are safe, compliant and professionally managed. 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.

Client money protection schemes are intended to 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).

The Government committed to making it mandatory that property agents in the private rented sector holding client money obtain membership of a client money protection scheme. A consultation on the implementation of mandatory client money protection was issued in November 2017 and the consultation response was published in April 2018². The Government intends that these agents be required to obtain protection by 1 April 2019.

¹ <https://www.gov.uk/government/statistics/english-housing-survey-2016-to-2017-headline-report>

² <https://www.gov.uk/government/consultations/mandatory-client-money-protection-schemes-for-property-agents>

Client money protection schemes will be required to obtain approval from the Secretary of State. There will be a consistent minimum standard of protection for consumers regardless of the agent they use or the scheme their agent is a member of. The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018³ (referred to in this document as the 'Approval Regulations') set out the conditions for approval and ongoing requirements for approved schemes.

1.3 What is the purpose of the guidance?

This document sets out guidance for prospective client money protection schemes looking to obtain approval from the Secretary of State. Section 2 sets out the factors that might indicate that a client money protection scheme has met the conditions for approval, as outlined in the Approval Regulations. We provide guidance on the type of documentation that might be provided to demonstrate the conditions are being met. We provide details of the process for schemes to apply for approval in section 3, as well as on-going requirements for approved schemes including provision of data to the Ministry of Housing, Communities and Local Government (the Department) for monitoring purposes and requirements to seek further approval for renewal of insurance cover and major changes to the scheme.

This guidance should be read alongside the Approval Regulations.

The application form for prospective schemes has been published separately on gov.uk.

1.4 Who should read this guidance?

This guidance has been produced for client money protection schemes. However, it will also be of interest to property agents seeking to obtain client money protection from an approved scheme. We intend to issue additional guidance to local authorities on the enforcement of client money protection ahead of the deadline for agents to obtain client money protection.

1.5 What is the scope of client money protection?

Client money that must be protected through a Government-approved client money protection scheme is defined in the legislation. It means money held by a property agent in the course of residential lettings or property management work as set out in s. 54-56 Housing and Planning Act 2016. The types of tenancies in scope are those of 21 years or less in length.

³ [S.I. 2018 No.751](#)

Client money includes unprotected deposits but does not include money protected in either a custodial or insurance-backed tenancy deposit scheme which has been approved by the Government (within the meaning of Chapter 4 of Part 6 of the Housing Act 2004).

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2. Approval conditions

In determining an application for approval the Department will consider whether the client money protection scheme is able to capably fulfil its purpose of providing protection to tenants and landlords (who we refer to as consumers in this guidance) who use property agents in the private rented sector. It is important that the scheme administrator is competent and fit and proper and that the scheme is designed in the interests of tenants and landlords. The Department's review of an application will focus on whether the scheme meets the conditions for approval.

In this section we set out the factors that would indicate a prospective client money protection scheme has met the conditions for approval, and some of the supporting documentation that might be provided in an application. This should be read alongside the Approval Regulations.

2.1 Condition 1: Scheme membership requirements [5(1)(a)(i-ii) and 5(2) of the Approval Regulations]

5.-(1)

(a)... the rules of the scheme—

- (i) make satisfactory provision for the manner of becoming and of ceasing to be a scheme member;
- (ii) require scheme members to meet the conditions for the handling of client money in paragraph (2);

5.-(2) The conditions for the handling of client money are that scheme members must—

- (a) Have and comply with written procedures for handling client money;
- (b) publish their procedures for handling client money on their website (if any);
- (c) provide a copy of their procedures for handling client money to any person who may reasonably require a copy, free of charge;
- (d) keep records and accounts that show all dealings with client money;
- (e) repay any client money, including where feasible any interest earned, without delay if there is no longer any requirement to retain that money or the client requests it;
- (f) hold client money in a client money account with a bank or building society authorised by the Financial Conduct Authority;

The rules of the scheme are to be treated as complying with paragraph 2(f) if they provide that, until 1 April 2020, they have effect as if they required scheme members to make all reasonable efforts to hold client money in a client money account with a bank or building society authorised by the Financial Conduct Authority.

- (g) hold and maintain professional indemnity insurance cover that is appropriate for the member's size, income, type of work and the amount of client money held.

Factors that would indicate the condition has been met:

- That schemes include the requirements relating to the handling of client money in 5(2) of the Approval Regulations in their scheme rules. The scheme rules may go beyond this and impose additional controls as appropriate to the risk of the member and the amount of client money being held.
- To ensure that prospective members seeking to join a scheme meet the scheme rules, there are appropriate checks which are likely to include (but not be limited to):
 - Obtaining a copy of the agent's professional indemnity insurance policy held in order to assist in making an assessment of whether the policy is appropriate
 - Obtaining proof that client money is being held in an appropriate client money account, *or that the member is making all efforts to obtain such an account (after April 2020 schemes will only be able to accept a member if they already hold money in an appropriate client account)*
 - Conducting appropriate financial due diligence on the agent
- The scheme rules should be easy for prospective and current members to locate and access. For example, the rules could be located in a prominent location on the scheme's website. The procedures for members joining and ceasing to be members of schemes should be clear and fair and non-discriminatory - only agents who have failed to comply with the terms of the scheme (for example, by failing to pay fees or failing to follow membership requirements) may be expelled from the scheme.
- Schemes should not only check that members meet the scheme rules at the point of them applying to join but should be able to satisfy themselves that members will continue to meet their rules on an ongoing basis. A monitoring plan should be in place which will seek to reduce the amount of client money that is lost and so reduce number of claims on the scheme. The intensity of monitoring of members should be adequate given the risk of client money being lost, and the amount of client money being held. Where non-compliance by a scheme member is identified, appropriate and timely action must be taken to prevent loss of client money.

Application documentation might include:

- Rules of the scheme and how members agree to these
- Procedures for accepting new members, renewing membership, and removing membership
- Example application form for prospective members and details of the type of evidence obtained from prospective members at the application stage
- Monitoring plans for checking members' adherence to scheme rules
- Escalation plan for dealing with non-compliance identified

2.2 Condition 2: Scheme administrator arrangements [5(1)(a)(v) and 5(1)(b)) of the Approval Regulations]

5.-(1)

(a) the rules of the scheme—

...

(v) if the scheme administrator receives a scheme closure notice, require the scheme administrator to—

(aa) give written notice to each scheme member of the matters mentioned in regulation 9(3) as soon as reasonably practicable;

(bb) facilitate the transfer of the scheme's members to an alternative designated or approved scheme at no additional cost to scheme members before the scheme closure date; and

(cc) cease accepting any new member or any membership renewal;

(b) arrangements have been made for the appointment of a scheme administrator who is independent from the scheme members;

Factors that would indicate the condition has been met:

- The governance structure of the scheme administrator ensures that it is sufficiently independent of scheme members and conflicts of interests are mitigated. The scheme does not share any bank accounts or other financial arrangements with members.
- The scheme is not subject to interference from members and members are not able to influence the payment of any claims.
- The scheme administrator and its Directors should not be removable from their duties without just cause, and the process for renewing the post of the administrator and its Directors should not undermine its independence. The procedures of any scheme must ensure that the appointment of those running the scheme may not be made unless the representation on the Board at the meeting is such that those who are subject to a potential claim or investigation are in the minority at that meeting.
- That the individuals responsible for administering the scheme are fit and proper and are competent to fulfil their functions.
- That arrangements are in place which would ensure that any potential closure of the scheme would be orderly and implemented in a sufficient period of time. The scheme has an exit plan under which they will stop accepting and renewing members and will give written notice to each scheme member as soon as possible once the closure decision has been taken. The scheme will commit to working with the Department to find an appropriate approved or designated scheme for members to be transferred to at no additional cost to the member and will assist in transferring these members including any relevant associated data. Furthermore,

the scheme will maintain a minimum level of resource to facilitate this transfer and to ensure that claims and complaints can still be handled effectively.

Application documentation might include:

- Ownership structure
- Governance structure including membership of any governance committees
- CVs of those responsible for administering the scheme and details of any suitability checks
- Conflicts of interest policy
- Rules regarding the appointment, renewal and dismissal of the scheme administrator
- Exit plan for the scheme

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2.3 Condition 3: Determining and making claims [5(1)(a)(iii-iv) and 5(1)(d) of the Approval Regulations]

5.-(1)

(a) the rules of the scheme—

...

(iii) require the scheme administrator, in the event that a scheme member (M) fails to account for client money to the person (P) entitled to it, to make good M's liability to P as soon as reasonably practicable *subject to paragraph 1A and without any deduction*; and

(iv) require the scheme administrator to accept claims for compensation under the scheme for at least twelve months after the date on which the circumstances giving rise to a claim occurred;

...

1(A) The Secretary of State may consider that the condition in paragraph (1)(a)(iii) is satisfied where the rules of the scheme have the effect that the scheme administrator is required to make good M's liability—

(a) only up to such amount as the Secretary of State considers appropriate

(b) only if or to the extent that M's liability can be made good without exceeding such aggregate limit on the liability of the scheme as a whole as the Secretary of State considers appropriate, or

(c) only if M's liability arises in relation to a risk that the Secretary of State considers it is appropriate for the scheme to insure against.

5.-(1)

(d) the scheme specifies—

(i) the process for making claims for compensation under the scheme; and

(ii) the procedures that will apply in relation to the investigation and determination of such claims and any complaints under the scheme.

- The scheme has a clear and fit-for-purpose process for consumers making claims for compensation, taking into account, where relevant, any language and accessibility requirements.
- The process is fair for consumers and ensures that compensation can be paid in a timely manner. Procedures for investigating claims and determining the level of compensation are robust but efficient.
- Consumers are able to easily identify from the scheme website (or app) which agents are members of the scheme and find details of how to make a claim for lost client money. There are no unreasonable barriers to consumers making an application to claim.

- There is a robust complaints handling policy allowing consumers the means to appeal if a claim for compensation has been declined, or complain if the consumer is concerned that the claim has not been handled efficiently.
- Adequate infrastructure is in place to handle claims and complaints. The scheme should be able to demonstrate that they have adequate resources in place for the expected number of claims and complaints and have clear plans in place for increasing this resource as necessary should the number of claims or complaints be higher than expected. Contingency plans are in place to ensure that claims and complaints can continue to be handled effectively where there is a service outage.
- Where claims or complaints handling is outsourced, appropriate due diligence should be undertaken on any outsourcer and the scheme should be able to evidence that they retain accountability and governance over the claims and complaints decision making process.
- The scheme allows for consumers to be reimbursed for any valid claim for lost client money. Claims from consumers should not be subject to a fee and consumers should not be made to pay any excess.
- *If the scheme determines it necessary to introduce individual limits in their scheme rules on awards for landlord/tenant claimants, then it should be able to demonstrate the following:*
 - *the limit is not lower than £50,000 per individual claimant per case.*
 - *the limit is simple enough so that it can be easily understood by consumers.*
 - *the scheme has in place measures to mitigate the risk of loss per consumer exceeding this limit by imposing controls on members through the scheme rules. For example, the rules could require members not to allow the accumulation of rental money on a client money account beyond a certain amount or beyond a certain timeframe before requiring the money to be transferred to the landlord, in line with 5(2)(e) of the Approval Regulations.*
- *If the scheme determines it necessary to introduce an aggregate limit on claims in a particular year, then it should be able to demonstrate the following:*
 - *that this limit is appropriate and allows the scheme to continue to pay out on valid claims. The limit should be in excess of the maximum probable loss for the scheme (see condition 4 below).*
 - *that the scheme is able to change its limit accordingly if it determines it needs to increase its insurance cover to meet its ongoing obligation to maintain appropriate insurance cover (as covered in condition 4 below).*

- *that the limit takes such a form that is comprehensible for consumers.*
- *that the scheme has not put in place internal limits on claims against any scheme member that holds an amount of client money that is lower than the aggregate limit. For example, a scheme with an aggregate limit of £50 million would not be able to limit claims against Member X to £5 million where Member X holds £10 million in client money. The scheme may impose an aggregate limit that is lower than the amount of client money held by one of its members but only where the scheme can demonstrate that the internal controls imposed by that member, and additional controls put in place by the scheme, are so robust that the prospect of the member losing client money in excess of that limit is so remote as to be unforeseeable.*
- *If a scheme decides to impose any limits or limitations in its cover then it should ensure these are well understood by consumers and must provide details on its website. The scheme should also make members fully aware of the extent of cover so that members can communicate this to their customers. The certificates that schemes provide to their members must include information about any limits and direct consumers towards where further information can be found about any exclusions in cover.*
- *The scheme's policy for dealing with claims does not impose exclusions which would impact on its ability to pay out on valid claims in normal times. For example, exclusions relating to members not complying with the scheme rules would not be acceptable as the scheme should be taking steps to ensure members meet scheme rules. The only exclusions that scheme may impose are those are genuinely uninsurable risks, and which its insurer will refuse to cover. These should only be risks which are very unlikely to occur and which the scheme and its members cannot mitigate against. If a scheme finds that an insurer is only willing to offer cover with exclusions which could impact on its ability to pay out valid claims in normal times, then it should seek out an alternative insurer.*
- *The scheme accepts claims for at least twelve months after the circumstances giving rise to a claim occurred. Valid claims within this time period should be accepted even where membership of an agent has been withdrawn, so long as the agent was a member at the time the client money was lost.*

Application documentation might include:

- Example application form for consumer claims
- Procedures for making compensation claims
- Procedures for investigating claims and the assessment framework for determining claims (including determining the amount to be paid)
- *Website literature and certificates relating to any limits imposed and any limitations in cover*

- *Documentation from the scheme's insurer attesting that certain risks are deemed uninsurable*
- Procedures for handling complaints
- Performance data on claims handling to date, including on the speed of response, and records of the proportion of claims paid in full (if existing scheme)
- Performance data on complaints handling to date, including volume of complaints and the proportion upheld (if existing scheme); this should be split by category of complaint

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2.4 Condition 4: Appropriate insurance cover [5(1)(c) of the Approval Regulations]

5.-(1)

- (c) arrangements have been made to secure insurance that—
- (i) covers any foreseeable liability which may arise in connection with the *failure of scheme members to account for client money to persons entitled to that money*; and
 - (ii) is appropriate with regard to the size and number of scheme members and the amount of client money held by scheme members;

Factors that would indicate the condition has been met:

- The scheme has cover to ensure that valid claims for lost client money (including those in the case of misappropriation and agent insolvency) can be paid out *subject to any scheme limits (as covered above under condition 3)*. Adequate cover may take the form of insurance alongside cash reserves, sureties or equivalent but cover must be reliable and readily available to the scheme in the case of a claim. Exclusions should not prevent the scheme from paying out in line with its policy for paying out on claims.
- The amount of insurance cover held (in combination with other means of cover) for client money claims should be sufficient to allow the scheme to pay out in the case of maximum probable loss in the coming year. Maximum probable loss is the maximum value of claims that are probable in a particular year. This should account for a range of claims scenarios, even those the scheme considers unlikely, and the figure would normally be well in excess of the expected level of loss in a year. For the avoidance of doubt, adequate cover does not mean the cover needs to be equal to the total amount of client money held by all members in aggregate. The scheme must manage its risk through its scheme rules and must assess the probability of the loss occurring.
- *Cover should be in full for any member unless the scheme can demonstrate that full loss of client money by a particular member would be unforeseeable because of robust controls that are in place and taking into account the member's conduct. Schemes should also note the guidance under condition 3 on the imposition of internal limits on claims against a member.*
- The scheme should be able to demonstrate robust calculations to support the figure chosen for the appropriate level of cover. In determining the maximum probable loss, a scheme should consider:
 - Past claims made against the scheme

- The amount of client money held by members, the number of members and breakdown of size of members
 - The adequacy of client money controls amongst its members and the conduct of its members
 - Monitoring plans in place to check how members are holding client money
 - The anticipated rate of failure of members taking into account changes in market conditions
 - Intelligence about specific instances of potential lost client money among members and impending claims
 - Any anticipated expansion of the scheme over the coming year
- The scheme should have plans and mechanisms for reassessing the appropriate level of insurance cover, and for obtaining additional cover if needed. It should be able to assess its cover where its membership grows, there is a material increase in the amount of client money protected, or the risk of lost client money is deemed to be higher. The scheme should have plans to forecast the anticipated change in membership and recalculate its maximum probable loss when renewing or arranging new cover (see ongoing requirements for further detail on this).
 - *The scheme has considered other risks to its operations other than those directly arising from the obligation to pay client money protection claims and has adequate insurance and risk mitigation measures in place to mitigate those. This may include obtaining the following insurance:*
 - *Public liability insurance*
 - *Professional errors and omissions insurance*
 - *Crime (fidelity guarantee) insurance*
 - *Employer's liability insurance*
 - *Computer "all risks" insurance (to include cyber-attacks)*

Application documentation might include:

- Documentation to show assessment of maximum probable loss, including calculations, and details of any challenge process that is followed to validate the calculations
- Procedures for regularly assessing the appropriate level of insurance cover
- Insurance policy documentation including policy wording and any limits of cover
- Evidence of any other (non-insurance) means of cover for the payment of claims

3. Application process and ongoing requirements

3.1 How to submit an application

Prospective client money protection schemes should complete the application form on gov.uk, indicating what additional documentation they wish to provide in support of their application. The application form and supporting documentation should be sent to CMPSchemes@communities.gov.uk.

Once you have submitted an application you will be allocated a case officer who will be your point of contact throughout the application process.

3.2 Timing of applications

The application window will be open for further schemes to apply until we direct otherwise. We will endeavour to determine complete applications within 10 weeks of receipt. However, where applications are incomplete and we require further information the time period may be longer.

3.3 Ongoing requirements [Regulation 4 and Regulation 8]

Approved client money protection schemes must meet the ongoing requirements in Regulation 8 of the Approval Regulations, as well as all other relevant law. They should notify the Department immediately if they fail to meet these requirements or if a change occurs which means they may no longer meet the approval conditions.

Further approvals

As well as having an appropriate level of insurance at the point of approval, an approved scheme must maintain an appropriate level on an ongoing basis (as set out in condition 4 under section 2 above) and should not wait until renewal date should it become apparent during the policy period that the policy is inadequate. The scheme should seek approval from the Department for any renewal of its client money protection insurance, or if it takes out a new policy. It should set out any proposed changes to the level of cover or material changes to the policy wording. It should also set out if it proposes any change to any limits or exclusions (if any) imposed by the scheme. This information should be accompanied by a revised calculation of the scheme's maximum probable loss.

The scheme should seek to give the Department as much notice as it is able to. The Department will undertake to issue accelerated approvals where additional insurance cover needs to be obtained quickly during the policy period because it has become apparent that the current cover is no longer appropriate.

Once the scheme renews its insurance policy (following approval by the Department), it must provide the Department with a copy of the policy documentation and confirmation of cover within one month of renewal.

Schemes should be taking proactive steps to maintain appropriate insurance cover to enable payment of valid claims, and the Department would expect that schemes would increase their limits alongside increases in insurance cover (as covered above). However, if the Department considers that any aggregate limit is no longer appropriate, for example because it will inhibit the scheme's ability to pay out on valid claims, and the scheme is not taking steps to address this then it will give schemes notice that they must amend the limit in their scheme rules. Schemes will be given time to make this change that is appropriate given the circumstances and which is no less than 30 days but may be a longer period if agreed between the scheme and the Department.

Under Regulation 4 of the Approval Regulations, approved schemes must apply to the Department for approval where the scheme administrator proposes to make a change to the scheme. Such changes would include (without limitation):

- Significant changes to the scheme administrator's governance structure since the last approval
- A significant expansion in the number of members or size of existing members such that the amount of client money protected by the scheme has increased by 20% or more since the last approval (if this isn't associated with approval of new insurance cover as per above)
- Where the scheme proposes to change the approved limits or exclusions in its cover (if this isn't associated with approval of new insurance cover as per above)

The above is not an exhaustive list of changes that would require approval. Approved schemes should consult the Department if they are unsure whether approval for a change is required.

Applications for approval of new/renewing insurance policies and changes to schemes should be sent to CMPSchemes@communities.gov.uk.

Ongoing monitoring and data submissions

The Department will monitor the performance of schemes and have an ongoing governance role. Regular governance meetings will be agreed between schemes and the Department to discuss the performance of the scheme.

From the point of becoming an approved scheme, information must be provided to the Department on a quarterly basis to allow for ongoing monitoring of the performance of the scheme. The data schemes must provide will include:

- The number of members currently protected by the scheme and the change since the previous quarter; with breakdown of acceptances and refusals of new members, members who have quit the scheme or who have been expelled (with reasons for expulsion)
- The estimated total amount of client money protected by the scheme

- The number of claims received, accepted and rejected in the last quarter, and the reasons for rejected claims
- The amount paid in claims to consumers in the last quarter; where this was not the full amount requested by claimants, the reasons why the parts of the claims were not paid out
- The remaining amount of cover available to the scheme in the current period for the payment of client money claims
- The amount of time taken to determine compensation claims;
- The number of complaints made in the last quarter; the number rejected and upheld; this should be split by complaint category
- The amount of time taken to determine complaints

This quarterly data should be compiled into a report in an easily accessible and editable format. The Department will agree the exact data with schemes and may amend the data requirements from time to time, giving schemes appropriate notice of changes.

Approved schemes should also provide the Department with their year-end accounts as soon as possible after they have been finalised.

Quarterly data and year-end accounts should be submitted to CMPSchemes@communities.gov.uk.

Annex A: Links to legislation

[Housing and Planning Act 2016](#)

[Approval regulations](#)

[Requirement regulations](#)

[Amendments to the Tenant Fees Bill](#) (which alter client money protection requirements)

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