

Written evidence

Shelter response to Department for Communities and Local Consultation

Mandatory Client Money Protection for Property Agents

December 2017

Shelter helps millions of people every year struggling with bad housing or homelessness. We provide specialist advice and support on the phone, face to face and online, and our legal teams can attend court to defend people at risk of losing their home.

However at Shelter we understand that helping people with their immediate problems is not a long-term solution to the housing crisis. That's why we campaign to tackle the root causes, so that one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

Summary:

Shelter strongly supports the introduction of mandatory client money protection for property agents and welcomes the opportunity to respond to this consultation on how this will be implemented.

Shelter agrees there should be minimum terms and conditions of cover and approved standards to ensure that client money protection schemes offer consistent protection to all landlords and tenants who entrust their money to agents. As with any regulation it will be important to ensure the requirements are properly enforced and there are meaningful sanctions for those that do not comply. Shelter would recommend that enforcement should sit with Trading Standards, however county councils may need additional resources to take on this role given their growing enforcement responsibilities.

The lettings market is currently undergoing considerable change and it will be important to ensure that any upcoming changes are coordinated and consumers are made aware of any new regulations so they only work with agents who are compliant. As such, Shelter welcomes the suggestion that the Lead Enforcement Agency introduced in the draft Tenant Fees Bill could play a role in overseeing all letting agent regulation to support this coordination and to lead on raising awareness.

Response to consultation questions:

1. Do you think that client money protection schemes should:

- 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?

Shelter would support the introduction of mandatory client money protection schemes (CMPS) being market led, with the Government granting approval only to those schemes that meet the required standards. This approach has worked well for other schemes such as tenancy deposit protection schemes, where three Government approved schemes collectively protect approximately £3.6bn in deposits.¹ Given there are already a number of CMPS providers, protecting approximately 60% of letting agents, building on the existing market would appear the most cost effective option and easiest to implement.

Shelter would advocate for there being a limited number of approved schemes as this would make it easier for landlords and tenants to check their letting agent is a member of an approved scheme. A limited number of schemes would also make it easier for the Government or Lead Enforcement Agency to ensure client money protection schemes continue to comply with the necessary requirements to maintain their approved status.

2. 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:

- a) Any requirements for a client money protection scheme to be approved/designated?
- b) The conditions which must be complied with by scheme providers?

Please provide reasons

Yes to a) and b).

Setting out clear requirements for a scheme to be approved, and the conditions that a scheme must comply with, is the only way to ensure that standards will be consistent across the different schemes and all client money is adequately protected. Without clearly defined standards client money protection schemes may be tempted to compromise on certain standards in order to offer agents lower prices.

¹ Client Money Protection Working Group Report, March 2017

Landlords and tenants cannot be expected to make judgements about whether a particular scheme is offering adequate protection but should be able to have confidence in whichever scheme their agent chooses. The Working Group highlighted the current poor awareness of CMPS and previous Shelter research has highlighted how tenants and landlords rarely discriminate in favour of agents based on the standards to which they are operating.² Therefore it is important to ensure all schemes are working to a consistent standard.

The introduction of clear standards will also make it easier for agents to choose between schemes as they will not be faced with schemes that provide vastly different offers.

3. 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).

We would strongly support a requirement for approved schemes to provide minimum levels of cover. There should also be a requirement for the client money protection offered to cover theft as well as misappropriation of funds and fraud.

4. 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.

Shelter would recommend that CMPS providers should comply with the following conditions in order to maintain their approved status:

- **Checking letting agents' compliance with other regulation** – CMPS providers should ask for proof that any potential members are complying with other legal requirements such as membership of a redress scheme and tenancy deposit scheme. When additional regulation comes into force, schemes should also request proof that agents are meeting these requirements. If agents are not able to provide proof, schemes should not offer them client money protection and should report the agent to the Lead Enforcement Agency.
 - **Data sharing** – CMPS providers should immediately notify the local trading standards team and Lead Enforcement Agency if they cancel an agent's protection, setting out the reasons why. The Lead Enforcement Agency should then be responsible for notifying any other schemes, if relevant, such as the agent's redress or tenancy deposit scheme.
 - **Payments** – CMPS providers should repay landlords and tenants immediately when there is evidence that a letting agent has inappropriately used their money.
- 5. 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? (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.)**

Please provide reasons

Yes. Shelter believes it is important the Government sets out clear requirements about the nature of client money protection that agents should hold to ensure agents take out sufficient cover. If agents are given freedom to choose the nature of client money protection then it is likely that, whether through ignorance or malice, some agents will choose cover that does not adequately protect their clients' money.

As outlined above, given the complexity of insurance, it is unreasonable to expect landlords and tenants to have to make judgements about whether or not a letting agent has taken out sufficient protection. The

² Shelter, Letting Agencies: The price you pay, 2013

only way to ensure all landlords and tenants, who entrust their money to agents, can have confidence that their money is properly protected will be if the Government stipulates the nature of the cover which agents must obtain.

6. 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).

Shelter does not have expertise in the insurance market so will not be answering this question.

7. 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:

- a) District council level i.e. by local housing authorities**
- b) County Council level i.e. Trading Standards?**

Shelter would support enforcement of mandatory client money protection being carried out at a county council level by Trading Standards teams. Shelter warmly welcomes the Government's intention to drive up standards in the lettings market, however regulation will only have an impact if it is properly enforced and coordinated enforcement will be key for catching rogue agents who are likely to ignore new regulations. As Trading Standards will be responsible for enforcing the ban on letting fees and are already responsible for enforcing transparency requirements under the Consumer Rights Act 2015, it would make sense for them to also oversee membership of client money protection schemes.

However, Shelter has concerns about whether Trading Standards will have sufficient resources to enforce this requirement, in addition to other new responsibilities such as enforcing the ban on letting fees. As the Chartered Institute of Trading Standards highlighted to the Working Group, the number of trading standards staff has halved since 2010 without any corresponding decrease in responsibilities and this does raise questions over how effective enforcement is likely to be. It is positive that the Government has suggested Trading Standards would be entitled to retain financial penalties and put this towards their enforcement work but Shelter would encourage the Government to also consider some initial upfront funding to support enforcement in the lettings market. Additional funding will not only support Trading Standards to fulfil their responsibilities but will also increase consumer confidence and help to raise awareness of the improvements in the lettings market.

In addition to enforcement by Trading Standards, Shelter supports the proposed introduction of a lead enforcement body and agrees this should be the same agency as the Lead Enforcement Agency for overseeing the Tenant Fees Bill. The Lead Enforcement Agency should ensure CMPS providers continue to meet the necessary standards and should issue guidance to Trading Standards teams on enforcing CMPS regulations. Furthermore Shelter suggests the Lead Enforcement Agency should be responsible for enforcing against agents that operate exclusively online and therefore may not be picked up by local Trading Standards teams.

8. 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;**
- c) Other (please specify)**

Shelter would strongly advocate for a £30,000 penalty for non-compliance. Given the large amounts of money which letting agents may hold, the penalty needs to be sufficiently large to deter them from taking

any risks with this money. A £5,000 fine would be meaningless when the amount of client money that agents hold is significantly larger than this.

Shelter would also suggest that agents who fail to take out mandatory client money protection after an initial fine should be given a banning order and not allowed to handle client money in the future.

9. 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.

Communication:

Shelter supports the Working Group's recommendation about the need for sufficient communication to aid implementation. Given the number of changes affecting the lettings market, it is important to ensure that consumers are aware of any new regulatory requirements and are encouraged to only use letting agents who comply with these regulations. The Government may wish to consider investing in some form of communication campaign once the relevant legislation comes into force, to raise awareness of the key changes. In particular, this should ensure consumers are aware of the requirement for agents to hold client money protection, the ban on letting agent fees and new regulatory requirements for agents.

National register:

Shelter would advocate for the introduction of a national mandatory register of letting agents. Admittance onto the register should depend on agents proving they meet all legal and regulatory requirements including being a member of a client money protection scheme. A national register should be publicly available so that landlords and tenants can easily check their letting agent is complying with all the relevant regulation. The Lead Enforcement Agency should be responsible for overseeing the national register.

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