

Consultation response

## **Department for Communities and Local Government consultation**

### **Client Money Protection Review**

September 2016

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Shelter helps millions of people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure 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.

## Introduction

Shelter welcomes the opportunity to respond to this consultation. We agree with the broad range of support that emerged during the passage of the Housing and Planning Act 2016 for further action on CMP. Our experience as a key housing advice provider across England has shown it to be a serious issue for our clients and a move to regulate in this area would be welcomed by the charity.

As the content covered by this review is wide reaching, we will only be answering questions 8 and 14 where we feel we have the expertise to contribute to this debate.

## Response to specific consultation questions

### **Question 8. Since transparency measures were introduced in April 2015, what increase or decrease has there been in the percentage of agents voluntarily offering CMP?**

The impact of the introduction of transparency measures has had little impact on the percentage of agents offering CMP, as RICS argues, self-regulation is not affecting those who do not act responsibly.<sup>1</sup> The idea behind them was to allow a free market to increase the number of registered letting agents, as tenants would shop around and only use registered agencies. It implies that the choice of letting agent is a free market.

In reality, tenants are unable to choose which letting agent they use as this is chosen by the landlord and our research shows tenants shop around for properties not agents. For tenants, if a specific letting agent handles the property they currently live in or one they wish to rent, there is no choice to shop around for a different agent – they can only choose to not rent that property, which may mean passing up one of the few properties in their budget or required location. Transparency measures rely on tenants having a consumer power to change market behaviour – they do not.

Arguably these measures should allow for landlords to influence the market as they choose their letting agents, however they are limited by the geography of their property and many are small and non-professional who do not appreciate the importance of CMP until it is too late. Given the sums of money involved and its potential impacts, CMP should be a basic protection for landlords and tenants, not a marketable feature of an industry that is already comparatively under-regulated.

Furthermore the transparency measures arguably made very little difference to letting agents' activities. Even before the amendment was added to the Consumer Rights Act 2015, those agents who had CMP were advertising the fact – this did not necessarily make others to follow suit.

### **Question 14. Should Government make CMP mandatory? (please give reasons)**

Shelter recommends that the Government makes CMP mandatory for all letting agents in England.

There is a clear appetite for CMP, with organisations from across the sector calling for change. These include letting agencies of all sizes, alongside landlord bodies and professional bodies for the property industry. Such as, the National Landlords Association, the British Property Federation, and the National Association of Estate Agents.<sup>2</sup> This enthusiasm counteracts one of the main oppositions to making CMP mandatory – that it would overburden the industry in regulation. When a measure is so widely accepted as necessary, it should not be considered a regulatory step too far.

Furthermore, this action would do little more than bring Letting Agencies in line with other similar money-holding bodies such as solicitors, estate agents and travel agents. There is no justification for

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<sup>1</sup> <http://www.arla.co.uk/media/1043845/client-money-protection-amendment-housing-and-planning-bill-2015.pdf>

<sup>2</sup> *ibid*

letting agents remaining outside the same regulatory standards others in comparable industries are held to, especially when they handle significantly more client money in their accounts than some.

It is essential to make CMP mandatory, as the current transparency measures have done little to solve the problem. The government acknowledged the problems surrounding Letting Agents holding so much money through the transparency amendment's introduction and should now commit to solving it. As explained above, the current transparency model is flawed in its incorrect assumption that tenants have freedom of choice. Due to the limitations in choice this is not a situation in which the market can be expected to act and compulsory measures are therefore necessary.

Letting Agents hold significant amounts of money on behalf of clients— estimated at around £2.7 billion at any one moment, including rent and interim deposit transfers before they are put into a protection scheme.<sup>3</sup> Whilst many reputable letting agents have chosen to protect themselves, instances of fraud are more often committed by rogue agents who currently have the freedom to not subscribe to CMP, resulting in people losing hundreds, if not thousands, of pounds. Compulsory CMP is necessary to protect both tenants and landlords.

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<sup>3</sup> ibid