

FACT SHEET



MARCH 2019

MORE INFO

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019
legislation.gov.uk/uksi/2019/386/pdfs/uksi_20190386_en.pdf

The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018
www.legislation.gov.uk/uksi/2018/751/pdfs/uksi_20180751_en.pdf

Housing and Planning Act 2016
www.legislation.gov.uk/ukpga/2016/22/contents/enacted

Tenant Fees Act
www.legislation.gov.uk/ukpga/2019/4/contents/enacted/data.htm

Client Money Protection for letting and managing agents

CONTEXT

The Housing and Planning Act 2016 enables the Secretary of State to require that letting and property agents in England belong to a government-approved Client Money Protection scheme.

On 4 March 2019 the Government passed The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.

WHAT IS CLIENT MONEY PROTECTION?

Client Money Protection is a compensation scheme which reimburses both the landlord and the tenants if an agent goes bust or misuses client money (loss, theft, misappropriation).

NB: Client money can include:

- Rent
- Other client funds held by agents such as cash float to pay for maintenance and repairs
- Unprotected deposits, i.e. those not registered or those that fall outside of the requirement to be registered
- Fee money taken in advance
- Money held by agents appointed as a receiver under the Law of Property Act 1925
- Sale proceeds
- Any interest earned which is due to the client

ELIGIBILITY

From **1 April 2019**, all property agents in **England** holding client money must belong to a government-approved Client Money Protection scheme.

NB: Client Money Protection schemes are only permitted to offer a grace period until 1 April 2020 to allow agents to open a client money account to hold client money.

APPROVED SCHEMES

Government approved Client Money Protection schemes for letting and property management agents in the private rented sector include:

MoneyShield: money-shield.co.uk

PropertyMark: propertymark.co.uk/working-in-the-industry/member-requirements/client-money-protection

The Secretary of State may withdraw the approval from an Approved Scheme.

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NB: The Secretary of State must take into consideration the need to allow the orderly transfer of scheme members to an alternative approved scheme before the closure date.

WHAT DOES THIS MEAN?

Letting and property management agents who hold client money must be a member of an approved Client Money Protection scheme.

NB: The property agent must ensure that the membership obtained results in a level of compensation being available which is no less than the maximum amount of client money that the agent may hold.

WHAT YOU NEED TO DO

Agents must:

- Hold client money in a client money account with a bank or building society authorised by the Financial Conduct Authority.
- Hold and maintain appropriate Professional Indemnity Insurance cover that is appropriate for the member's size, income, type of work and the amount of client money held.
- Have and comply with written procedures for handling client money.
- Keep records and accounts that show all dealings with client money.
- Repay any client money, including where possible any interest earned, without delay if there is no longer any requirement to retain that money or the client requests it.

NB: A 'client money account' means a suitably designated and recognised current or deposit account at a bank or building society into which clients' money is paid or transferred.

Client Money Protection schemes may set additional requirements on membership.

TRANSPARENCY REQUIREMENTS

Certificate

Letting agents must obtain a certificate confirming membership of an approved Client Money Protection scheme.

Display

Letting agents must display the certificate confirming their membership of an approved Client Money Protection scheme prominently:

- In each of the agent's premises in England where the agent deals face-to-face with persons using or planning to use the agent's services as a property agent.
- At a place in each of the agent's offices where the certificate is likely to be seen by consumers.

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Publish

Letting agents must publish a copy of the certificate confirming their membership of an approved Client Money Protection scheme on the agent's website.

Produce

Letting agents must produce a copy of the certificate confirming their membership of an approved Client Money Protection scheme to any person who may ask for it, free of charge.

Change of circumstances

Letting agents must notify each client in writing if the agent's membership of an approved Client Money Protection Scheme is revoked or if the agent ceases to be a member of an approved scheme and becomes a member of a different scheme.

Letting agents must notify clients within 14 calendar days of the change in circumstance and give the name and address of the new scheme of which the agent becomes a member.

NB: Under these Regulations, 'client' means any person on whose behalf the agent holds client money, or an agreement to hold client money with, or any person from whom the agent is likely to receive client money from i.e. all landlords, tenants, guarantors, prospective tenants.

ENFORCEMENT

It is the responsibility of every local authority in England to enforce the requirements for letting and managing agents to belong to a government-approved Client Money Protection scheme.

NB: A local authority means a District Council, County Council for an area for which there is no District Council, London Borough Council, the Common Council of the City of London, or the Council of the Isles of Scilly.

A breach of the rules is taken to have occurred in each local authority area in England in which the agent has premises, or housing is situated in relation to which the property agent's letting agency work, or property management is carried out.

NB: A local authority in England must follow any guidance provided by the Secretary of State regarding its role under the Regulations.

Under these Regulations a local authority in England may impose a financial penalty for a breach which occurs outside that authority's area (as well as in respect of a breach which occurs within that local authority's area).

NB: Where a local authority proposes to impose a financial penalty under these Regulations in respect of a breach of a requirement in the area of a different local authority, they must notify it of its intent to do so. On receipt of a notification the other local authority is relieved of its duty to enforce against the breach referred to in the notice.

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PENALTIES

There will be a civil penalty of up to £30,000 for non-compliance with the requirement to belong to a scheme and a penalty of up to £5,000 for non-compliance with a Transparency Requirement.

NB: A letting agent cannot receive a penalty for breaching the Transparency Requirements if the agent has taken all reasonable steps to obtain a copy of a certificate confirming the agent's membership of the approved Client Money Protection scheme and the scheme has not provided it.

Local authorities will be able to retain the monies collected from civil penalties to fund enforcement.

APPEALS

Before a fine is levied, Trading Standards must issue a Notice of Intent. This must be given within six months of Trading Standards having evidence of a breach.

NB: Within 28 calendar days of receiving that notice, the person on whom it is served can make representations.

Once the 28-day period has expired, Trading Standards can issue a Final Notice giving details of the level of the fine and how it is to be paid. The notice can be withdrawn at any time.

Once a Final Notice has been issued, the person on whom it is served can appeal. Should the final notice not be appealed, or be upheld on appeal, and the fine not be paid, Trading Standards can ask the County Court for an order to recover that fine.

Only one penalty may be imposed on the same property agent in respect of the same breach.

More than one penalty may be imposed on the same property agent in respect of a breach where the breach continues after the end of the 'Relevant Period' (unless the property agent appeals against the Final Notice within that period) or if the property agent appeals against the Final Notice within the 'Relevant Period', the breach continues after the end of 28 calendar days beginning with the day after that on which the appeal is finally determined, withdrawn or abandoned.

NB: 'Relevant Period' means the period of 28 calendar days beginning with the day after that on which the Final Notice in respect of the previous penalty for the breach was served.