



**Response to DCLG Client Money Protection Review
From the Association of Residential Letting Agents (ARLA)
September 2016**

Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.
2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.
3. ARLA members are governed by a Code of Practice as well as Membership and Conduct Rules providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection (CMP) and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

Questions:

Question 1: How many letting agents offer CMP schemes and what proportion of the market is this?

4. There are no exact statistics on the size of the lettings industry; provided by Government or otherwise. However, the property portal Rightmove believes there are approximately 10,000 letting agent offices in England and as of 30 September 2016, ARLA had almost 8,600 individuals, working across almost 8,200 offices within its membership. It is a mandatory membership requirement that all ARLA Licensed companies to have CMP.



Question 2: How many CMP schemes exist?

5. ARLA is the largest of the professional bodies for letting agents and therefore, we are likely to be the largest provider of CMP to letting agents. However, for clarity, ARLA is one of five property-related associations underpinned by the National Federation of Property Professionals (NFoPP) and it is NFoPP which operates the Client Money Protection scheme for ARLA members through NFoPP Regulation¹.

6. There are four CMP schemes which we know to exist. Three are run by the professional bodies of NFoPP (encompassing ARLA), The Royal Institution of Chartered Surveyors (RICS), and the National Approved Lettings Scheme (NALS). There is also a commercial offering provided by Hamilton Fraser Insurance known as CM Protect.

Questioning 3: What services are typically offered by a CMP scheme?

7. Client Money Protection is a reimbursement scheme which recompenses landlords and tenants should an agent misappropriate their rent, deposit or other client funds. If a company covered by NFoPP's Client Money Protection scheme ceases to trade having misused rent, deposits or other funds, NFoPP Regulation will consider an application for reimbursement through the CMP scheme (subject to the scheme rules²).

8. We would note that under NFoPP's CMP scheme, agencies do not have to still be in membership when the claim is made. As long as the misappropriation took place whilst an agency was in ARLA membership we will still accept the claim even if the agency has either left membership or been expelled when the claim is actually made.

Question 4: How much does membership of CMP schemes cost?

9. There is a one-off Application Fee of £180 to join the NFoPP CMP scheme along with a variable annual levy. The 2016 NFoPP CMP Levy is £330. The levy is an annual payment, charged at a flat rate per legal entity as a contribution to the cost of running the scheme. When renewing their CMP, agents are also required to provide an Accountants Report

¹ <http://www.nfopp-regulation.co.uk/>

² NFoPP will pay out up to £25,000 per claimant (or a maximum of three month's rent per property for landlords, whichever is less) to a total of £500,000 per company and an overall maximum of £3 million per year. for full details please see: <http://www.nfopp-regulation.co.uk/protecting-clients-money/>



completed by a chartered accountant which provides financial details of the sums held in the member's Client Account.

Question 5: What benefits do you receive as a member of a CMP scheme?

10. Letting agents hold a significant amount of money in the form of deposits, rent and repair funds on behalf of landlords and tenants. CMP ensures that funds are held in a designated Client Account separate from a letting agent's business or office account and in the event of an agency going into administration or misappropriating funds it offers landlords and tenants a route to reimbursement.
11. Protection of client money gives landlords and tenants trust and confidence that they are dealing with a professional letting agent and their money is safe. CMP schemes reduce risk by ensuring that the money will be handled honestly and appropriately.
12. The introduction of mandatory CMP for letting agents would ensure that consumers are able to approach and engage the whole-of-market where each and every letting agent offers the same level of protection and consumer confidence.
13. Further, CMP prevents evictions (therefore reducing both homelessness applications and thus the associated costs to local authorities in re-housing people in temporary Bed and Breakfast accommodation). Should an agent misappropriate rent monies paid by tenants, landlords can evict the tenant for rent arrears despite the fact that the tenant has paid the rent – because the agent has misappropriated the rent monies before they reached the landlord, the tenant is technically in rent arrears and must either pay again or be at risk of eviction under the rent arrears grounds of Section 8 of the Housing Act 1988 (and potentially receive a County Court Judgment in addition for the outstanding rent monies). Where CMP is in place, the landlord can claim on the CMP scheme so they get their rent money and have no reason to evict the tenant. Please see Appendix One for testimonials from landlords when an agent in Northampton recently misappropriated client funds.

Question Six: Have agents offering CMP seen an increase in business attributable to offering CMP?

14. As a provider of a CMP scheme it is within ARLA's ability to answer this question. However, we know from our members that most landlords are not aware of CMP, but when the



issue has been raised in market appraisals it has given letting agents more traction and they have experienced a spike in instructions.

15. Some of our members have also told us that the introduction of mandatory CMP would help to improve the image of the sector because there are still many consumers that suffer at the hands of unscrupulous agents or agents that become bankrupt. For instance, the case of Martin Marcus who fronted a string of letting agencies and used numerous aliases between 2009 and 2015 to pocket £221,000 from more than 60 tenants and landlords. As reported in the news, Mr Marcus repeatedly offered tenants properties he had no right to let out, took deposits from multiple tenants for the same property, moved in different tenants than those promised and used a variety of methods and excuses to hold on to thousands of pounds in deposits and rent³.
16. The lettings industry is currently a two-tier market; those who are members of a professional body with CMP and those who are not. Consumers are not aware of this difference and therefore ARLA members want CMP to be mandatory in order to create a level playing field from which consumers can make a choice in the full knowledge that whoever they choose, their money will be safe. Without the introduction of mandatory CMP and with the growing number of online agents and high street agents entering the market who are unregulated we could see more instances of misappropriated funds and unacceptable behaviour from a minority of bad letting agents; only fuelling uncertainty for landlords and tenants and further damaging the reputation of the industry.

Question 7: Does an agent offering CMP affect your decision on whether to use that agent either as a landlord or a tenant?

17. We would very much hope that agents offering CMP does affect a landlord or tenant's decision to use that agent. We provide members with a leaflet about what they need to know and how they can promote the scheme to landlords and tenants. The leaflet is available on our website at: <http://www.nfopp-regulation.co.uk/media/1044700/cmp-leaflet.pdf>

³ <https://www.barnet.gov.uk/citizen-home/news/Letting-agent-jailed-for-rental-scam.html>

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?

18. We have not seen anything other than our projected organic growth in membership (and thus take-up of CMP) since the introduction of the transparency rules under the Consumer Rights Act 2015. We have no evidence to suggest that the transparency regulations have had any impact on levels of CMP in the market.

Question 9: How many claims have been made on CMP schemes? And what proportion are successful?

19. Since the inception of the NFoPP CMP scheme we have received claims against an average of four companies per year. Provided claims meet the scheme rules, in all but two occasions, all monies claimed have been repaid. The two exceptions were where the total claims exceeded the £500,000 per company rule but in both cases claimants received more than three-quarters of their money back.

Question 10: What is the main reason given for a claim?

Question 11: How many claims are a result of fraudulent activity?

20. The only reason for an application for reimbursement under a CMP scheme is misappropriation of client funds by an agent. However, this falls into two distinct categories: Deliberate theft for personal enrichment or using client funds to maintain the business. For example, in December 2014 Janine Pickett of Stour Provost, took money from a branch of Dorset Lettings, which she ran under franchise. Police investigations found that financial records showed Ms Pickett paid for Mediterranean cruises and a £7,000 Welsh pony with the proceeds⁴. The situation caused much stress and worry for staff, landlords, tenants and suppliers. However, because the organisation was a member of ARLA, landlords and tenants were able to recoup the vast majority of their losses through NFoPP's CMP scheme.

21. In addition to personal enrichment, the other main reason given for an application for reimbursement is the misappropriation of funds to support business activity. An example of this that was reported in the media, is the case of David Whitefield who stole £123,000 from dozens of landlords and tenants. Mr Whitefield pocketed rent and deposits paid by tenants rather than passing on the cash to his clients over four years. During this time he

⁴ <http://www.bbc.co.uk/news/uk-england-dorset-30576212>

put tenants' rent and deposits in the company's 'working capital' account. An investigation found that David Whitefield had made 1,200 payments into the 'working capital' account. The company collapsed into administration in 2014, owing more than £198,000. As Cllr Randy Conteh notes in the article most people, ordinary landlords and tenants, are unlikely to get any of their money back. This is because Mr Whitefield's company was not in a CMP scheme. Had he have been, those landlords and tenants would not have been left out of pocket.

22. Appendix two details a number of recent cases reported in the media where agents have misappropriated clients funds. In only one of these cases were the landlords and tenants protected through a CMP scheme.

Question 12: What is the average level of a claim?

23. Where applications are made to the NFOPP CMP scheme against a member company, the average total claim per company is just over £50,000.

Question 13: In addition to insurance based schemes, are there any other CMP models? (Please describe them, including pros and cons)

24. We must reiterate that the NFOPP CMP scheme is not an insurance scheme. It is a reimbursement scheme. Our understanding is that the schemes operated by RICS and NALS are also reimbursement rather than insurance schemes.

25. We would like to take this opportunity to note two errors in the consultation letter dated 22 August 2016. On page one it states "[a]gents pay a membership fee (typically around £300-£500) to join a scheme and this forms part of a central pot of money that can then be used to pay successful claims by landlords and tenants". This is not correct. The owners of companies within ARLA membership pay an annual CMP Levy which cover the costs of administering the NFOPP CMP scheme. In the event of claims, money is reimbursed by NFOPP, subject to the scheme rules, out of our company funds to those who have lost money. NFOPP then insures itself against its members misappropriating client funds. This is what allows us to pay out many times more than that which we receive through the CMP Levy.

⁵<http://www.stokesentinel.co.uk/fraudster-kept-123k-owed-landlords/story-29034542-detail/story.html#ixzz44l8fX8eS>

26. Secondly, on page two it states “[t]he government’s concern about making CMP mandatory is that requiring agents to pay to belong to a scheme would force honest agents to buy insurance against themselves being fraudulent”. Client Money Protection is a reimbursement scheme. It is not insurance. NFoPP does not insure its members against their own fraud. It reimburses landlords and tenants for money lost as a result of anyone in a member’s company misappropriating client funds (owner or employee, ARLA member or not).

Question 14: Should Government make CMP mandatory? (Please give reasons)

27. Yes the Government should make CMP mandatory. CMP is an entirely sensible measure that protects both the landlord and tenant in the unlikely event that an agent goes into administration or misappropriates client funds. Mandatory CMP would provide an extra, but essential, degree of security for landlords and tenants as letting agents currently hold approximately £2.7 billion in client funds.

28. When booking a holiday, travel operators are required by law to have client money protection through ABTA, ATOL or IATA. Solicitors are required to hold CMP for client funds held in their accounts, the government protects client funds held in bank accounts through the Financial Service Compensation Scheme (FSCS) and yet landlords and tenants are not protected by law in the same way. It beggars belief that the law protects a tenant’s holiday but not their home.

Question 15: What would be the impact on rents in the PRS?

Question 16: Would tenants be prepared to pay an additional fee if agents offered CMP?

29. There is no evidence to suggest that mandating CMP will have any impact on rent levels in the private rented sector. We are not aware of any agent that charges any fee to either landlords or tenants for being a member of a Client Money Protection scheme. Indeed, as the majority of the industry already have CMP, the cost to business of mandating CMP will be very small.

30. We would also note that the costs to business associated with mandating CMP will be drastically lower than the implementation costs of other recent legislative changes such



as the changes to Right to Rent checks created under the Immigration Act 2014 where compliance costs have run into £100,000s for some agencies.

Question 17: How should membership be enforced?

31. Membership should be enforced by Trading Standards as part of their existing work in enforcing the transparency rules under the Consumer Rights Act 2015. We believe fines should be at least £5,000 with a zero-tolerance approach, enforced through Fixed Penalty Notices with fines going back to the enforcing body and ring-fenced for further enforcement activities.

32. Whether or not an agency has Client Money Protection is a black and white issue. They either have it or they don't. Therefore, we do not think this should significantly increase burdens on Trading Standards teams; particularly, as under the transparency rules, agencies currently have to display whether or not they have Client Money Protection. Indeed, this change may make enforcement of the transparency rules easier.

33. To further assist enforcement and overcome evasion where an agency is using our logos to denote they have CMP, we would be happy to enter into a data sharing arrangement whereby we will confirm to relevant enforcing bodies whether an agency does have Client Money Protection through NFoPP's CMP scheme. This data is also already publicly available on our website.



Appendix One:

Landlord Testimonials on the benefits of CMP

This is a fantastic idea! I personally had little knowledge of letting law or actually anything to do with ARLA protection. I am not a professional Landlord but instead am an individual who (for work reasons) has been forced to move out of Northampton for a couple of years. In doing so I used a high street named letting agent. The agent was in the market square and looked reputable. Unfortunately, it came to light that my tenant's payments and deposit were personally used by the company and the deposit was not held in the proper DDA account. On the tenant moving out, I personally had to find the money to repay them which in turn has incurred further costs on my credit card.

Miss C Graham

London

On the issue of Client Money Protection, I think this is a must for every letting agent. Our rent was not credited to our account by the letting agent and we lost thousands of pounds. Our savings went into paying the mortgage to prevent our house being repossessed. Then the tenants stopped paying rent and refused to leave the property when their tenancy expired, when they eventually left the property we had to gut the entire building and start over again. This was quite stressful for my family and we have still not recovered from this ordeal.

Mrs I Ansah

Ghana

As per your last email indeed this is very important and I think it's a subject that should be better documented. We started off 6 years ago with a small company, we were very new to this procedure, first time we had let out a house. So went through all the documentation they explained to us that the tenants deposit went in to a separate account both for our benefit and the safety for the tenants money and this had to be lodged with a company in a certain time frame. Never did we think at any time we had to check that this had actually been carried out. Way too trusting on our part and I'm afraid a learning curve. I believe that definite procedures need to be put in place so these things never happen again, all companies that trade under this act need to follow the same guide lines and it needs to be checked and governed very closely, we put our trust in these companies and pay a fee on a monthly bases for them to look after us. So very strongly agree that all companies have to be governed and follow very set guide lines.

Mrs P Cassidy

Glasgow



I agree with ARLA's proposal that all agents should provide Client Money Protection. I myself have been a victim of an unscrupulous Letting Agent handling my money wrongly without any apparent concern of the consequences. As well as withholding rent that was due to me the agent also did not lodge tenant deposits received into deposit protection schemes as they were entrusted to. This left me as a landlord not only thousands of pounds out of pocket for rental income. It also made me liable for the tenant's deposits even though I had not even taken this money. Any legislation that will make Letting Agents think harder before adopting such an irresponsible attitude is a good thing. I'm sure not all Letting Agents who end up mishandling clients' money set out to do so from the beginning. However things don't always go to plan and unforeseen problems can arise. With better legislation to protect money which is rightfully the landlords this would go a long way to ensure that agents think harder before taking business risks which jeopardise things.

Mr P Barker
Northamptonshire

With regard to ensuring all agents have client money protected, and the impact of my situation. Overall, the financial impact was devastating due to continued responsibility of obligations to tenants with regard to maintenance, deposit refund, mortgage payments etc. without any remuneration. In addition the legal costs involved in trying to salvage anything from the matter. Because there was no deposit the law sides with the tenant and expedited eviction processes e.g. section 21, are no longer available. So in my case, I took the brunt of the tenant's loss too. Outside of the financial impact, the stress and time required has had a big impact on my family as a whole. In short, without these rules in place, someone like myself who relies on the expertise of an agent can end up in financial ruin with little or no legal recourse.

Mr R Hawkins
Northampton

Thank you for the mail and for reaching out to us. Indeed I agree with the proposal for fairly obvious reasons. When you are an inexperienced landlord you don't necessarily consider all possible eventualities of engaging letting agents. Perhaps we tend to err on the side of seeing the best in our 'fellow man' but we certainly never expected what happened with our previous agent to happen - especially given they were not a 'small operator'. Had we even worried about the eventuality we would have been checking far more frequently and noticed the abnormalities a little earlier than we did. Even if the police ever end up being able to get the money back, it will take a huge amount of time and effort to do so. It is disappointing to realise that we live in a world where people would do that, but of course this happens time after time. Any action the government can take to help prevent this type of thing happening to others is definitely worthwhile. We were lucky that we were not in the situation that our livelihood depended on the rent payments and were able to cover the losses through some emergency re-balancing of our assets - many others would not have been so lucky.

Appendix Two:

Misappropriation Case studies

August 2016 – PropertyLetByUs survey of 500 tenants⁶

PropertyLetByUs conducted a survey of 500 tenants which shows that only 50 per cent of tenants have ever received confirmation that their deposit was ever put in a protection scheme. A spokesperson for the online agency said, “While deposit protection schemes protect tenants, there is little or no policing to ensure landlords and agents are compliant. Our research shows that tenants simply don’t trust landlords and agents with their deposits, which is disappointing in light of the fact that the schemes have been around for many years.”

August 2016 – Case of Kelly Hodd⁷

Kelly Hodd defrauded her former employer, JMA Associates an estate agent in St Leonards on Sea of £4,720 over a four-month period in 2015. Ms Hodd took from the firm by means of cheques for her own gain by using deceit which included falsely involving her own family. JMA Associates is a small firm from Sussex and the victim in the case said it was a huge breach of trust and it made her question her own personal and professional relationships to a distressing degree.

June 2016 – Case of Martin Marcus⁸

Martin Marcus fronted a string of letting agencies and used numerous aliases between 2009 and 2015 to pocket £221,000 from more than 60 tenants and landlords. He repeatedly offered tenants properties he had no right to let out, took deposits from multiple tenants for the same property, moved in different tenants than those promised, and used a variety of methods and excuses to hold on to thousands in deposits and rents.

Requests from landlords and tenants for their money to be returned were met with excuses and in many cases cheques which bounced. Transactions from Mr Marcus’s account found payments to Virgin Active, Easyjet, payments in Spain, payments to mobile phone companies and payments to his son.

⁶<https://www.lettingagenttoday.co.uk/breaking-news/2016/8/another-survey-shows-tenants-demanding-client-money-protection>

⁷<http://www.hastingsobserver.co.uk/news/crime/st-leonards-fraudster-defrauded-estate-agents-out-of-thousands-1-7516765>

⁸ <https://www.barnet.gov.uk/citizen-home/news/Letting-agent-jailed-for-rental-scam.html>



May 2016 – Case of Barinder Uppal⁹

In September 2015 students at Coventry University started complaining that they were paying deposits and rent (from £250 up to around £1,500) to Barinder Uppal. He was a letting agent who arranged viewings before taking cash or bank transfer deposits from students, some of whom were being offered the same accommodation.

Many of the students found themselves with nowhere to live and with no money left to find alternative accommodation. The students affected were almost exclusively international students. Police are now looking into recovering money for the students by seizing Mr. Uppal's assets.

April 2016 – Case of Williams & Young¹⁰

Between May 1, 2013, and July 17, 2015, Amy Williams syphoned off more than £408,800 from the company's account, and paid it into her boyfriend's bank account who used it to fuel a gambling habit. When company funds began to run low, Ms Williams started defrauding tenants directly, taking deposits and advanced rent.

She also took money from different people for the same properties. After pocketing deposits and advance rent, people were simply left homeless. In one case involving a city centre flat, 12 unsuspecting victims were defrauded. Nine landlords were also "systematically defrauded". In some cases landlords were unaware that the money had not been passed on.

April 2016 – Case of Whitefield Properties¹¹

David Whitefield stole £123,000 from dozens of property landlords. Mr Whitefield pocketed rent and deposits paid by tenants rather than passing on the cash to his clients over four years. During this time he put tenants' rent and deposits in the company's 'working capital' account.

An investigation found that David Whitefield had made 1,200 payments into the 'working capital' account. The company collapsed into administration in 2014, owing more than £198,000. One landlord was owed £900 in rent that has never been paid by Mr. Whitefield.

⁹<http://www.coventrytelegraph.net/news/coventry-news/overseas-students-conned-out-thousands-11289948>

¹⁰<http://www.birminghammail.co.uk/news/midlands-news/couple-left-clients-homeless-used-11228825>

¹¹<http://www.stokesentinel.co.uk/fraudster-kept-123k-owed-landlords/story-29034542-detail/story.html#ixzz44l8fX8eS>



October 2015 – Case of John Sanderson, Lancaster Property Network Management¹²

In September 2015, Lancaster Property Network (Management) Limited was wound up and went into liquidation owing £2 million to 87 different creditors such as solicitors, painters, local council and in rent to landlords whose properties the company dealt with. However, in October Watchdog's Rogue Traders television programme revealed that Mr Sanderson was still working as a letting agent under a different company name.

The programme discovered that at least ten landlords and nine students were all owed money. Mr. Sanderson was collecting rent from tenants and not passing it on to the landlord and he also collected money from students for utilities and did not pay the bills.

One landlord who signed a contract with Lancaster Property Network (Management) Limited said she got the full amount of rent the first month, but then the second and third month there was just a bit of money coming in, and then the following months nothing arrived.

December 2014 – Case of Dorset Lettings¹³

In December 2014 Janine Pickett of Stour Provost, took money from a branch of Dorset Lettings, which she ran under franchise. Police investigations showed that financial records showed Ms Pickett paid for Mediterranean cruises and a £7,000 Welsh pony with the proceeds.

The situation caused much stress and worry for staff, landlords, tenants and suppliers. However, because the organisation was a member of ARLA, landlords and tenants were able to recoup their losses through ARLA's CMP compensation scheme.

November 2014 – Case of Roy Jackson¹⁴

Roy Jackson stole £70,000 from his customers and failed to give dozens of landlords' cash which they were owed. The fraud took place between January 1, 2011 and January 20, 2013.

Local police reported that around 30 landlords, some with more than one property, had reported that they had not received the money owing to them. In total, the investigation included 48 properties.

¹² <http://www.bbc.co.uk/programmes/articles/2j9nWKzVS3r117hXzxbPgj5/company-response>

¹³ <http://www.bbc.co.uk/news/uk-england-dorset-30576212>

¹⁴ http://www.ipswichstar.co.uk/news/suffolk_letting_agent_roy_jackson_faces_jail_after_admitting_embezzling_around_70k_from_clients_1_3830741