



SPECIFICATION

Custodial Tenancy Deposit Scheme:

Legacy Pool

Ref. CPD/004/109/019A

1 Introduction

- 1.1 The Department for Communities and Local Government (DCLG) is the central government department responsible for policy on housing, planning, local government, communities and neighbourhoods, regeneration and economic growth, and the fire service.
- 1.2 The Custodial Scheme was introduced in the Housing Act 2004, which made it mandatory that where a deposit is taken it is appropriately safeguarded by way of tenancy deposit protection schemes and for the establishment of dispute resolution procedures to provide for quick access to justice. These arrangements apply to all assured shorthold tenancies.
- 1.3 The Department is seeking a prospective delivery partner (hereinafter referred to as the "Service Provider") and wishes to invite tenderers to bid for the Custodial Tenancy Deposit Protection Scheme – Legacy Pool. The Scheme is currently being run by an existing delivery partner whose Agreement expires on 31 March 2016. The current Scheme holds (1m+) deposits worth in excess of £900m. To ensure continuity, DCLG is seeking a Service Provider to continue the management and future development of the existing legacy pool of deposits.
- 1.4 This Specification sets out what is required of the Service Provider to assume management and administration of the legacy pool of the Custodial Tenancy Deposit Protection Scheme. The Service Provider will be required to:
- transition the existing deposits from the current provider;
 - manage the existing pool of deposits;
 - generate new business;
 - have in place a robust IT infrastructure capable of storing a large amount of data;
 - provide a secure and reliable method of holding deposits; and
 - return the deposit to tenants at the end of the tenancy.
- 1.5 The Service Provider will also be required to provide an Alternative Dispute Resolution (ADR) service to settle disputes between tenants and landlords/agents. The Service Provider will be required to generate enough



interest on deposits to cover their reasonable costs. Ideally, they will also be able to generate sufficient interest on deposits to also pay a level of interest to tenants.

- 1.6 The Service Provider will run the Scheme for an initial period of five years, with options to extend for up to a further three years in accordance with Clause 3 of the Agreement. The Service Commencement Date of the new Agreement will be 1st April 2016.

2 Background

- 2.1 The Government is committed to ensuring that where a tenant pays a deposit to their landlord in good faith it will be returned at the end of the tenancy provided that the tenant has complied with the terms of the tenancy agreement. Where private sector landlords or their agents require tenancy deposits, these deposits must be safeguarded in a Government approved Tenancy Deposit Scheme.
- 2.2 The provisions in the Housing Act 2004 which ensure tenancy deposit protection for the majority of private sector tenancies have successfully meant that in the event of a dispute, following either the successful conclusion of ADR or a final court judgment, the deposit (in whole or in part, depending upon the agreement, decision or order) is paid over to the relevant party or parties within 10 days beginning with the date of notification of such outcome.
- 2.3 The Tenancy Deposit Protection ("TDP") legislation in the Housing Act 2004 requires that where a deposit is paid in connection with an assured shorthold tenancy, it must be protected by the landlord or agent in an authorised scheme and certain information must be sent to the tenant within 30 days of the deposit being received. This information is set out in the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 ("the Prescribed Information Order") and is referred to as the "prescribed information". Landlords and agents who fail to comply with the legal requirements are liable for a mandatory financial penalty of between one and three times the amount of the deposit, payable to the tenant, on the tenant bringing proceedings under section 214 of the Act. Non-compliance also affects landlords' ability to rely on section 21 of the Housing Act 1981 (see section 2.7 'Legislative Background').
- 2.4 The provisions place DCLG (and the Welsh Ministers in Wales) under a duty to ensure that at least one Custodial Tenancy Deposit Scheme is established. Schemes are either:
- a Custodial Scheme, where the landlord/agent upon receipt of the deposit from the tenant pays the deposit to a designated third party. The deposit is returned to the landlord/agent and/or tenant in the agreed proportion

¹ Under section 21 of the Housing Act 1988 a landlord can obtain an order for possession of an assured shorthold tenancy ("AST") at any point after the first 6 months of the tenancy providing that any fixed term has expired and they give the tenant at least 2 months' notice. This is sometimes referred to as a 'notice only' ground for possession, as there is no need for the landlord to prove any fault on behalf of the tenant.



following appropriate authorisation or a final court judgment; or

- an Insurance Scheme, where the landlord/agent retains the deposit and the Scheme ensures the availability of funds to replace the deposit in the event of misappropriation by the landlord/agent.

2.5 A key component of the Tenancy Deposit Schemes is that they are required to offer ADR procedures as an alternative to court action to determine disputes. The availability of ADR and the protection of the Scheme mean that the tenant does not have to face the expense, and often impossible task, of enforcing a court judgment against the (sometimes-absentee) landlord or agent. However, the use of ADR is not compulsory for either landlords or tenants and the option of going to court to resolve any dispute is still available to both parties.

2.6 At this time it is only the Custodial Scheme which is being tendered. The intention of this requirement is to award one Agreement for the legacy pool. There is a concurrent requirement for the Custodial Tenancy Deposit Scheme – New Business (CPD/004/109/019B refers) which intends to award up to 4 Agreements for new Custodial Schemes to be implemented. In totality, therefore, it is intended that both requirements will offer landlords and tenants greater competition and choice.

Legislative Background

2.7 The Schemes must comply with the legal provisions as set out in the Housing Act 2004. This section summarises the key provisions relating to Tenancy Deposit Schemes. These are found in Sections 212 to 215 and Schedule 10 of the Housing Act 2004 as amended by section 184 of the Localism Act 2011 and the Housing (Tenancy Deposit Schemes) Order 2007. They provide for Tenancy Deposit Schemes to be secured to ensure that tenants' deposits are appropriately safeguarded.

2.7.1 Section 212

Section 212 (tenancy deposit schemes) provides for:

- arrangements to ensure that one or more Tenancy Deposit Schemes (custodial and/or insurance based schemes) are secured in connection with assured shorthold tenancy deposits and to facilitate the resolution of disputes arising in connection with such deposits;
- the national authority (DCLG / Welsh Ministers) to, if deemed appropriate, provide financial assistance and/or a guarantee to Schemes. However, the national authority is under no obligation to make any financial contribution towards the operation or setting up of Schemes and the Schemes are expected to be self-financing. Interest under the Custodial Scheme may be retained to fund administration with a portion of interest returned with the deposit. The Insurance based Scheme is expected to be funded through contributions to administrative fees; and
- the national authority to make regulations giving powers to, or conferring duties upon, Scheme administrators in connection with the Schemes. No such



regulations have been made to date.

2.7.2 Section 213

Section 213 (requirements relating to tenancy deposits) provides for a landlord or agent to ensure any deposit taken is safeguarded by a Tenancy Deposit Scheme within 30 days, and to provide the tenant with information prescribed by the national authority as to the Scheme which is safeguarding the deposit and the details of the relevant legislative protection afforded.

2.7.3 Section 214

Section 214 (proceedings relating to non-compliance) provides for a tenant (or anyone who pays a deposit on behalf of the tenant) to apply to court where a landlord has not complied with the requirement to safeguard the deposit and provide the prescribed information within 30 days, or where confirmation from the relevant Scheme administrator that the deposit is being held in accordance with the Scheme is not forthcoming. In either of these circumstances, where the court is satisfied that the landlord has not complied with initial requirements, the court must order the person who appears to be holding the deposit to repay it to the tenant or pay the deposit into the Custodial Scheme within 14 days of the date of the court order. In addition, the court must order the landlord to pay a penalty of between one to three times the amount of the deposit to the tenant.

2.7.4 Section 215

Where there has been a failure to protect the deposit within the 30 day period, landlords also lose the ability to rely on s21 of the Housing Act 1988 unless they return the deposit to the tenant in full or with deductions agreed by the tenant, notwithstanding that the landlord may otherwise be justified in retaining some or all of the deposit. In cases where the deposit has been protected within the 30 day time-limit but there has been a failure to send the prescribed information to the tenant (either because no information has been sent at all or because the information sent does not comply with the requirements of the 2007 Order), it will also not be possible for the landlord to rely on the notice only ground for eviction under s21 but only until such time as the prescribed information is sent to the tenant (see section 215(2) of the 2004 Act as amended by the Localism Act 2011).

2.7.5 Schedule 10

Schedule 10 (provisions relating to tenancy deposit schemes) provides:

- under the Custodial Scheme for the tenant to pay the deposit to a landlord or agent who is then required to pay the deposit into a designated Scheme account where the Scheme holds the deposit until the tenancy has ended. The designated account must not contain any other monies (other than interest accruing on the deposit amounts). Where both parties agree at the end of the tenancy (either between them or following ADR) that the deposit amount should be paid wholly to one of them, or partly to one and partly to the other, or in the event of a dispute, where notification is received following a final court judgment, the deposit (in whole or in part, depending upon the agreement,



decision or order) is paid over to the relevant party or parties within 10 days beginning with the date of notification of such outcome);

- for Schemes to respond as soon as practicable to a request from a tenant seeking confirmation that the relevant deposit is being held in accordance with that Scheme;
- for all Schemes to provide facilities for ADR (as a cheaper, quicker alternative to the courts).

2.7.6 Secondary legislation

The Housing Act 2004 requires landlords or letting agents to give the tenant 'prescribed information' within 30 days of receiving the deposit. This information must include details on the Tenancy Deposit Scheme safeguarding the deposit; the compliance of the landlord or agent with the initial requirements of the Scheme; and the operation of the provisions of the Housing Act.

The purpose of the prescribed information is to inform the tenant that their deposit is protected by an authorised Tenancy Deposit Scheme and enables the landlord to demonstrate he or she is aware of their responsibilities under the Act.

The secondary legislation sets out the content of the prescribed information and the manner and form in which this information can be passed to the tenant by the landlord or letting agent.

Financial Conduct Authority (FCA) Regulation

- 2.8 Custodial Deposit Schemes are liable to be regulated by the FCA. The Service Provider will be responsible for determining whether their Scheme approach falls under the remit of the FCA and, if so, to ensure that they are compliant with all FCA requirements. The tenderer will be required to demonstrate evidence of this verification and compliance in their proposals.

3 Objectives

3.1 The key objectives for DCLG to achieve through this Agreement are:

- Protection for tenants deposits – a tenant should be able to get their deposit back at the end of their tenancy if they comply with their tenancy agreement;
- Compliance with legislative instruments - the Housing Act 2004; and
- A seamless transition from the existing Scheme provision to the new Agreement.

4 Scope

- 4.1 The Service Provider is required to provide a solution that meets all the statutory requirements of the Custodial Tenancy Deposit Protection Scheme – Legacy Pool as set out in the Housing Act 2004.



4.2 The key elements of the Scheme include (without limitation):

- **Administration** – The Service Provider’s solution must be able to handle the large amount of information that will be flowing in and out of the Scheme on a day-to-day basis. This includes the necessary IT infrastructure to securely record and store data and, in compliance with Data Protection Act 1998, the provision of customer services to deal with queries or complaints from users of the Scheme. It also includes the provision of a website and helpdesk to provide information and guidance to users.
- **Banking** – The solution must offer a secure and reliable method of holding tenants deposits in a central bank facility (see Schedule 18 of the Agreement for a list of Permitted Investments) to ensure the deposit can be returned at the end of the tenancy. The solution’s banking arrangement must meet all statutory requirements and government policies in relation to, but not exclusive to, money laundering, deposit-taking and any other relevant FCA regulation. The solution must generate interest which can be used to fund the Scheme administration and, where possible, to pay interest on deposit amounts to tenants.
- **ADR Service** – The solution must offer an effective form of Alternative Dispute Resolution (ADR) to ease the handling of disputes at the end of a tenancy and offer a decent alternative to the courts. Over 35,000 dispute resolution cases have been handled by the current provider since the launch of the Custodial Tenancy Deposit Scheme up until 30 September 2014. There will be a transition period of six months from 30th September 2015 to 1st April 2016 during which the Service Provider will work with DCLG and, where appropriate, the current provider to transition the deposits and records. All new ADR cases starting from 1st April 2016 will be handled by the Service Provider under the new Agreement.
- **Pay interest to tenants** – The Scheme is expected to offer tenants interest although this offer should only be after the Service Provider has deducted their reasonable costs for administering the Scheme and a relevant contribution. The Service Provider should only start payment of interest to tenants one year after the Service Commencement Date (i.e. from 1st April 2017). The tenderer is required to provide details of their planned financial models and hence the anticipated level of interest which may be provided to tenants, in accordance with the Financial Pro-forma and instructions (Annex C of the ITT refers). The tenderer is also required to provide details of stress testing both in terms of level of interest (both up and down) and for different membership rates.
- The Scheme should not make the receipt of interest compulsory. If a tenant does not want to receive interest, they should be able to say so. The tenderer should provide details on what they would do with unwanted interest payments, for example giving it to charity.
- The Scheme must not appropriate the Deposit amounts for itself. Any



unclaimed Deposits must remain in a designated account unless instructed otherwise by DCLG. The Scheme must provide for the Deposit pool to be invested solely in the Permitted Investments.

- **Flexibility to move deposits** – The Service Provider must allow the flexibility for a landlord or agent to move deposits between the protection Schemes, including the Insurance based Schemes during the life of the tenancy. Any deposits moving from the Scheme must only be transferred to an Approved Alternative Scheme Provider and must never be transferred to the landlord or tenant during the tenancy. If a deposit is moved between Schemes, then the level of interest generated by that deposit should be passed along with the deposit to the new Service Provider so that, at the end of the tenancy, it can be given to the tenant along with any new interest generated, or managed in accordance with the new Service Provider's proposals for unwanted interest. The Service Provider is required to ensure that prescribed information is provided to the landlord each time such a move occurs. The tenderer should include details of how this will be achieved in their proposals.
- **Transition of legacy pool** – The Service Provider must work with DCLG and, where appropriate, the current provider to transfer all the necessary information and money associated with the existing deposits during the Implementation Period. They must respond to queries from landlords and tenants about the new service provision ahead of the Service Commencement Date of 1 April 2016. The Service Provider's methodology for the transition of the Legacy Pool shall be provided for in the Implementation Plan (Section 7, Table 1, question 5 of the ITT Instructions and Notices refers).

- 4.3 The Service Provider should be aware that housing is a devolved issue and that, while the current intention is for the legislation to be consistent in England and Wales, it is possible that in the future the administrations will choose to operate differently. The Service Provider will, therefore, be expected to ensure that the Scheme can operate successfully in both England and Wales.

5 Key Requirements

- 5.1 The Service Provider is required to ensure that its Scheme meets the requirements detailed in Table 1 below.
- 5.2 Whilst the legislation is primarily aimed at landlords and tenants, it is recognised that many landlords use a letting agent. Therefore, the Service Provider must ensure that their approach in meeting the requirements of the Scheme is appropriately tailored to take account of the respective party with which they are dealing with (e.g. a landlord only, someone acting on behalf of a landlord, or both).



Table 1

1	The proposed structure must deliver all the elements of the Scheme, including banking, administration and information management, IT systems and data storage, and, ADR services. The proposed structure must be self-sustaining.
2	The Scheme must be accessible to all Landlords of properties in England and Wales.
3	<p>The successful tenderer will need to work with DCLG and, where appropriate, the current provider to ensure a seamless transition from the existing provision to the new Agreement for all deposits in the Legacy Pool. The successful tenderer must ensure that all transition and implementation activities, taking into account the requirements detailed in Section 6 of this Specification, are undertaken to allow the Scheme to be fully operational as of the Service Commencement Date on 1st April 2016.</p> <p>The successful tenderer will be required to provide weekly updates on their Implementation Plan and to flag to DCLG any risks / issues that arise that may cause delays to the Service Commencement Date.</p>
4	<p>The Scheme must enable Landlords to register with the Scheme prior to taking any deposits, and must collect and maintain appropriate data on each deposit that it safeguards. The Scheme must establish robust processes, in compliance with the Data Protection Act 1998, to enable the following information to be gathered from Landlords at the point of deposit protection, including thorough paper-based processes if necessary:</p> <ul style="list-style-type: none"> (a) Names of all tenants party to the tenancy agreement; (b) Contact details of tenant(s); (c) Name and address of Landlord; (d) Property address to which the Deposit relates; (e) Total value of the deposit paid; (f) Date on which deposit is paid to the Landlord (and date on which tenancy begins if different); <p>The Scheme may collect such other information as it sees fit provided that it is necessary for the purposes of the Scheme or at the request of DCLG.</p>
5	The Scheme must adopt safe, secure and reliable systems and methods for receiving Deposits from Landlords and for transferring such Deposits to the Scheme's designated account. The Scheme must at least enable



	<p>this mechanism to include cheques and electronic bank transfers. The Service Provider must put measures and compliance checks in place to prevent money laundering.</p> <p>The Scheme should make the payment process as accessible as possible for landlords and it must be free of charge.</p>
6	<p>The Scheme must provide for changes to the names of the parties to a tenancy agreement which may take place throughout the life of a tenancy agreement. This includes changing the names of any tenant(s) and Landlord(s) (for example in the case of sub-letting, assignment, or sale of the property whereby the Deposit remains protected).</p>
7	<p>The Scheme must provide information to Landlords to enable them to comply with the 'prescribed information' section of the Housing Act 2004 within thirty (30) days of taking a Deposit. This information is divided into two types: tenancy-specific and generic. The Scheme will be required to provide Landlords with the generic information. This includes:</p> <ul style="list-style-type: none">a) Name, address and contact details of the Service Provider;b) Name, address and contact details of the ADR service offered by the Scheme;c) Information on the procedures applying for the release of the Deposit, including in the event of a dispute;d) Standard information leaflet explaining how the Deposit is protected by the Act provisions;e) Procedures that apply when making a single claim; andf) Data Protection Notice explaining the use and ownership of the data. <p>The Scheme must have appropriate mechanisms in place to provide the required information to landlords.</p>
8	<p>The Scheme must not appropriate the Deposit amounts for itself. Any unclaimed Deposits must remain in a designated account unless instructed otherwise by DCLG. The Scheme must provide for the Deposit pool to be invested solely in the Permitted Investments. The tenderer is invited to submit details on how they would determine that a tenancy has completed and what efforts they would take to find people who had not claimed the deposit that they are due, for example after a dispute has been raised (Section 7, Table 1, question 10 of the ITT Instructions and Notices refers).</p>
9	<p>The Scheme is expected to offer tenants interest although this offer should only be after the Service Provider has deducted their reasonable costs for administering the Scheme and a relevant contribution. The</p>



	<p>Service Provider should only start payment of interest to tenants one year after the Service Commencement Date (i.e. from 1st April 2017).</p> <p>The Scheme must not make receipt of interest on the deposit compulsory, and must enable a facility for tenants to opt-out of receiving such Interest. Where relevant, the tenderer will be required to explain the procedures that will be adopted for deducting Lower Rate Tax from interest paid to tenants on returned deposits, including any proposals for paying interest without deducting tax (where form R85 has been completed), and for issuing Section 352 certificates of tax deducted. DCLG understands that tax should only be deducted when the interest is paid or credited to the account.</p>
10	<p>The tenderer is encouraged to demonstrate how they would promote better standards in the Private Rented Sector (PRS), for example by setting up a charitable foundation (Section 7, Table 1, question 12 of the ITT Instructions and Notices refers).</p>
11	<p>The Scheme must provide confirmation of receipt of Deposit and responses to queries regarding the status of their Deposit protection to tenant(s). This includes responding to queries from all joint tenants in a household who are party to the tenancy agreement. The Scheme must ensure that adequate security is in place to correctly identify any query from a tenant in relation to their Deposit protection.</p> <p>The Housing Act 2004 requires the Schemes to respond to any such queries 'as soon as is practicable'. The Service Provider will need to identify realistically achievable timescales to provide such a response.</p>
12	<p>The Scheme will be required to return the deposit to the relevant party or parties at the end of the tenancy either where the Scheme receives agreement from both the tenant and landlord or where one party notifies the Scheme of a court decision in his favour. The Scheme must have appropriate mechanisms in place to receive such notifications.</p> <p>The Scheme must return the Deposit amount(s) to the appropriate parties within ten (10) days of receiving notification in accordance with paragraph 4(3) of Schedule 10 of the Act. This timescale is the statutory maximum, and the tenderer should consider ways to return Deposit amounts more quickly. In households with multiple tenants, as a minimum, the Scheme may return the relevant Deposit amount to one tenant in one lump sum provided that consent has been given by all tenants at the point of the Deposit return, or at the outset of the tenancy.</p> <p>The Scheme must also ensure that the correct proportion of the deposit is paid to the correct party. The Scheme must make every effort to find people where cheques are uncashed after six (6) months or the deposit remains otherwise unclaimed. The Scheme must also have robust measures in place to prevent the fraudulent or inappropriate repayment</p>



	of deposits.
13	<p>The Scheme must provide a customer service centre to deal with day-to-day enquiries from Landlords and tenants and any other interested parties that might arise in connection with their Scheme. In addition the Service Provider must be willing to provide details of their membership database to a third party, as designated by DCLG, to create a central database allowing tenants and landlords to check in real time which scheme holds their deposit without having to check with each scheme individually. Full data protection and fraud prevention must be maintained during this process. (Historical data in relation to e-mails and general correspondence received is provided at Appendix A of this Specification for information purposes only).</p> <p>The Service Provider should be aware that the Scheme may be required to respond to Welsh official requests around terminology in guidance and the Service Provider should be prepared to respond to such requests in a timely and correct manner.</p>
14	<p>The Scheme must make available a robust complaints procedure for all End Users of the Scheme (i.e. tenants, landlords, agents), any authorised representatives such as solicitors and anyone acting on a tenant / Landlord's behalf.</p>
15	<p>The Scheme must provide an Alternative Dispute Resolution facility to all End Users to be available for enabling disputes relating to tenancy Deposits to be resolved without recourse to the courts. Use of ADR must never be made compulsory in the event of a dispute (Schedule 10 of the Housing Act 2004 refers). The ADR Service must be an impartial procedure for the resolution of disputes, with an evidence-based decision making process. The ADR Service must be proportionate to the relatively small sums of money which are likely to be in dispute. Use of the ADR Service must be free to all End Users.</p> <p>The provision of an ADR service is designed to offer a simpler and speedier redress to tenants and landlords than the courts. (Historical data in relation to ADR cases is provided at Appendix B of this Specification for information purposes only).</p>
16	<p>Landlords and tenants will be given the option where there is a dispute at the end of the tenancy to decide to use the ADR service or pursue the dispute through the courts. Where both parties agree to use the ADR service they will also have agreed to be bound by the decision the ADR service makes.</p> <p>The ADR service should only deal with genuine disputes as far as possible. The Scheme should employ appropriate methods to try to dissuade frivolous claims from being pursued. DCLG has a preference</p>



	<p>that these measures are non-financial, such as providing a free mediation service. However, the tenderer may consider alternative (financial) approaches, provided that they can demonstrate how they will mitigate the impact of such approaches on those with low incomes.</p> <p>The ADR service should provide for a private and confidential service, subject to any anonymised statistical and other returns that DCLG may require.</p> <p>The Scheme must inform tenants and Landlords about the ADR service (including that the ADR decision is binding), and provide a clear process by which it receives agreement from parties to go to ADR. In households with multiple tenants, the Scheme may accept consent to use ADR from one tenant, provided that consent to that tenant acting on behalf of all others has been given by all tenants at the point of the dispute, or at the outset of the tenancy. Schemes are not expected to deal with more than one ADR dispute per tenancy agreement.</p> <p>The Scheme must as a minimum collect and maintain the following data for each dispute:</p> <ul style="list-style-type: none">a) name and contact details of tenant(s);b) property address to which the deposit relates;c) name and address of the Landlord;d) total value of the deposit;e) total value of the deposit in dispute;f) nature of the dispute;g) outcome of the dispute. <p>The Scheme may collect such other information as it sees fit provided that it is necessary for the purposes of the ADR Service or at the discretion of DCLG.</p> <p>The tenderer will need to consider appropriate timescales for providing this information and the most appropriate cost-effective methods of obtaining and recording the information.</p>
17	<p>The ADR Service must be able to identify and exchange information with other elements of the Scheme, including the provision of, notification of, or verification of, outcomes arising from use of the ADR service to other elements of the Scheme so as to facilitate proper release of the Deposit.</p>
18	<p>The Scheme must promptly inform the appropriate parties of a final decision of the ADR service (including providing a record of the outcome to the parties).</p> <p>The ADR service will be required to maintain appropriate records of all disputes and other records of all transactions for 7 years. The Service</p>



	Provider must store this data securely and ensure that it can be safely removed once the specified time period has ended.
19	The Scheme must utilise a technical solution that is capable of providing the services required by the Scheme, including handling the volumes of Deposits and enquiries required by the Scheme's activities.
20	The Scheme's technical solution must remain capable of providing the Scheme throughout the Term including to the standards that are set out in the Agreement.
21	The Scheme must ensure that all data gathered is used only for the purposes required to deliver the Services or for use as agreed with DCLG, and is securely held and is not lost or degraded in any way. The Service Provider must inform landlords that their data may be used by Government to improve the Private Rented Sector (PRS). The Service Provider must be able to inform Landlords of their rights to opt out if they do not want their data to be used in this way and to only provide data from Landlords who have given their consent.
22	The Scheme must provide to the Authority, or provide the Authority with access to the Service Provider's systems to allow the Authority to retrieve the Statistical Data in order to enable the Authority to monitor the operation of the Scheme.
23	The Service Provider must ensure that all data held in relation to the Scheme, including records of disputes, is securely held and is not lost or degraded in any way and is held subject to requirements under the DPA. Personal Data shall be retained for so long as is necessary for the effective operation of the Scheme and regulatory compliance and always subject to Principle 5 of the DPA. Data other than Personal Data must be retained for seven (7) years in accordance with Clause 33 of the Agreement unless the Authority gives instructions that it must be destroyed earlier.
24	The Scheme must ensure the security of personal and financial information held by the Scheme in whatever format and by whichever party involved in the Scheme.
25	The Scheme must have and implement appropriate internal controls to minimise the scope for fraud. This should include appropriate audit procedures (both internal and external) and management review.
26	The Scheme must promote itself to all potential End Users of the Scheme, including Landlords and tenants and any other authorised representatives of such parties.



27	The Scheme must ensure that all written information relating to Scheme registration, Deposit registration, information for tenants, the ADR Service and general enquiries is able to meet the requirements of the Equality Act 2010 and give appropriate consideration to any minority rights issues which might apply.
28	The Scheme will be required to allow for access to financial records and other supporting documentation by DCLG's finance function, audit function (Government Internal Audit Agency) and the National Audit Office (NAO) as considered necessary. This will include Open Book accounting.
29	<p>The Scheme will be required to ensure that landlords who decide to move their tenant's deposit to a new Scheme Provider mid tenancy can do so. Any deposits moving from the Scheme must only be transferred to an Approved Alternative Scheme Provider and must never be transferred to the landlord or tenant during the tenancy. Any interest due to the tenant should be transferred to the new Service Provider along with the deposit so that the new Service Provider can pay the tenant at the end of the tenancy, or manage the interest in accordance with the new Service Provider's proposals for unwanted interest. The Service Provider is required to ensure that prescribed information is provided to the landlord each time such a move occurs.</p> <p>In the event that an alternative Custodial Tenancy Deposit Service Provider ceases to operate an alternative Custodial Tenancy Deposit Scheme for any reason, the Service Provider must be prepared to work with DCLG and the alternative Service Provider to take on its deposits.</p>

General Aspects of the Scheme

5.3 The Scheme will need to be structured in such a way as to be compliant with all relevant legislative and regulatory requirements including, but without limitation:

- The tenancy deposit provisions in the Housing Act 2004 (as amended) and the secondary legislation made under that Act;
- Data protection legislation, specifically with regard to ensuring and maintaining the security and integrity of data and information collected;
- The Freedom of Information Act 2000;
- Legislation concerning money laundering and other requirements (for example, in respect of deposit taking requirements) and the regulatory requirements of the FCA;
- The Arbitration Act 1996;



- All relevant discrimination and equalities legislation and, to the extent not encompassed by this description, the Human Rights Act 1998; and
- The Renting Homes (Wales) Bill.

Encouraging a savings culture

- 5.4 Many renters struggle to save and debt can be a real problem in the Private Rented Sector. Encouraging tenants to save more could help tenants cope with unplanned future expenditure and it is in landlords' interest to promote savings as this will further prevent the temptation for tenants to dip into rent money in times of stress. While DCLG is clear that the security deposit is not a savings vehicle, the tenderer is encouraged to offer proposals as to what they plan to do to promote a savings culture. This could include working closely with banks or credit unions to promote the opportunities that already exist. The Service Provider will be expected to protect the good name of tenancy deposit protection and to ensure that any organisations they work with are a positive influence on the Private Rented Sector.

Returning Deposits

- 5.5 The Scheme will be required to ensure that the deposit is returned to the relevant party inclusive of any interest generated on that deposit, provided that interest shall not be payable on any Deposits returned prior to 1 April 2017. In case the deposit is not claimed by the tenant/ landlord, the Act does not permit the Scheme administrator to access the deposit amounts. The unclaimed deposits will remain in custody unless otherwise directed by DCLG.

Business Continuity Planning and Disaster Recovery Plan

- 5.6 The Service Provider will be required to develop and maintain a robust Business Continuity Plan and Disaster Recovery Plan. The Service Provider will account for any representations and/or comments from DCLG on its Business Continuity Plan and Disaster Recovery Plan. The plan will be tested and updated accordingly by the Service Provider every year. In the event of a change in any of the Service Provider's services, systems and procedures or a disaster the Service Provider will test and update the plan within a month. The test reports will be provided to DCLG.
- 5.7 The Service Provider will ensure that the Scheme's services are available as set out in the Disaster Recovery Plan following the declaration of a disaster. The Service Provider needs to ensure the service has minimal downtime through effective back up services, systems and procedures.

6 Implementation

- 6.1 The Service Provider will be required to work with DCLG to ensure a seamless transition from the existing provision to the new Agreement for all deposits in the Legacy Pool. The tenderer is required to provide a detailed Implementation Plan (Section 7, Table 1, question 5 of the ITT Instructions and Notices refers) to demonstrate how this will be achieved.



Transition of the Legacy Pool (in the event of a change in Scheme Provider)

- 6.2 The successful tenderer will be required to work with the current provider to undertake the following requirements during the Implementation Period.

Agents/landlords and Tenants Communication

- 6.3 The successful tenderer will need to work with DCLG prior to the Service Commencement Date and likely to be around the start of 2016, to issue a communication to agents, landlords and tenants confirming how the change of Scheme Provider will affect them, the actions they must take and confirmation of the transition date and any deadlines for action concerning:

- Signing up to the new Service Provider's terms and conditions;
- How ADR cases will be handled;
- How to provide consent to use the new Service Provider's ADR service and whether this can be withdrawn by either party as well as how this situation would proceed;
- Prescribed Information – and any requirements to be reserved to all tenants;
- Contact details held on external websites, documentation and guidance documents; and
- Any other guidance that DCLG deem appropriate to ensure the industry is clear on the impacts of a change of Scheme Provider.

Records and archive

- 6.4 The successful tenderer will need to check the inventory provided by the current provider and be responsible for the movement of the secure items.
- 6.5 Once the successful tenderer has taken receipt of the records and archives which will be boxed, if applicable, with the contents and destruction date marked on each box, they will assume full responsibility for this documentation.
- 6.6 Records will be transferred at the expense of the successful tenderer.
- 6.7 Any records remaining with the current Provider after the handover date will be charged at a commercial rate and payable direct to the current provider.

Computer Records

- 6.8 The successful tenderer will need to work with the current provider to ensure successful transfer of computer records through an agreed medium. This includes:
- Agreed export data format and transfer protocol;



- Agreed transfer of electronic images of documents stored within the current provider's internal system;
- Accepting test data and a full register as a dress rehearsal (prior to the handover);
- Accepting a full copy of the register for going live;
- On migration, accepting a duplicate set of information to mitigate risk of damage in transit; and
- Accepting a standard list of transactions/descriptions as well as communication history.

Correspondents

- 6.9 On the last working day prior to the Service Commencement Date the successful tenderer will work with the current provider to reconcile the number of records and data provided as well as an audit summary of the data.
- 6.10 The successful tenderer will be expected to accept all correspondence at least one (1) week prior to the Service Commencement Date.
- 6.11 The successful tenderer will deal with all enquiries that are received after the published cut off date for the current provider to respond to enquiries.

Social Media

- 6.12 The successful tenderer must respond to all Scheme related social media enquiries from 1 April 2016.

ADR Cases

- 6.13 The successful tenderer will be expected to start handling ADR cases raised by landlords and tenants in the existing legacy pool from 15 February 2016.

Handling ADR Related Complaints

- 6.14 The successful tenderer will be expected to deal with complaints received, where the agent, landlord or tenant can evidence an error has been made in fact or law when reaching the adjudication decision, from seven (7) days prior to the Service Commencement Date.
- 6.15 The successful tenderer will be expected to respond to complaints (review, investigate, provide written decision etc.) received regarding the ADR process seven (7) days after the transition date even where these refer to ADR carried out fully by the current provider. However, the successful tenderer would be indemnified from any monetary implications arising from upheld complaints (i.e. resulting in compensatory (or otherwise) payments to be made to Landlords, Tenants or Agents).



Security Checks

- 6.16 The successful tenderer will be expected to work with the current provider and DCLG to agree the transition of responsibility for Anti-Money Laundering, fraud reporting and investigations, Customer Due Diligence and agree the treatment of ongoing matters.

Website Details

- 6.17 The successful tenderer must provide the URL of the new site (if applicable) to the current Provider and DCLG, at the earliest opportunity. This will enable the current provider to provide a hyperlink from their website to the new website, if appropriate.
- 6.18 All rights in any website used in the provision of the scheme (URL) shall vest with the DCLG.

Deposit Submissions

- 6.19 The successful tenderer will be required to accept deposits to be registered and submitted a minimum of ten (10) days prior to the Service Commencement Date.

Reporting Liabilities

- 6.20 Any liability for tax will lie with the successful tenderer if the register of deposits is handed over part way through the year.
- 6.21 Liability for tax payment to the HMRC, if the register of deposits is handed over part way through a quarter will be negotiated by the current provider and the new Service Provider.

Processes and Procedures

- 6.22 The successful tenderer will be given access to view the current provider's procedures used in the administration of the Scheme to ascertain whether they are of any use to them.

Complaints and Query Investigations

- 6.23 All complaints in respect of services provided by the current provider prior to the Service Commencement Date which are received by the Service Provider after the Service Commencement Date will be escalated by the successful tenderer or DCLG to the current provider. Complaints will be dealt with in line with current provider's published complaints handling procedure.

7 Key Dates

- 7.1 Implementation Period: following intended Award from summer 2015.
- 7.2 Commencement of Agreement for the Legacy Pool will be on 1st April 2016.



7.3 Transition of ADR cases: 30th September 2015 to 1st April 2016.

8 Glossary

8.1 The following are definitions of abbreviations and phrases that appear regularly throughout this document.

ADRS or ADR service	Alternative dispute resolution service
Agreement	Service Concession Agreement
Custodial TDP or the 'Scheme'	Custodial Tenancy Deposit Protection Scheme, including an ADR service
DCLG or the 'Department'	Department for Communities and Local Government
FOI	Freedom of Information
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
OJEU	Official Journal of the European Union
SEH	Survey of English Housing
Single Claim	Claim made by a party for the repayment of all or part of the deposit when the other party is uncontactable.
TDP	Tenancy Deposit Protection
"The Service Provider"	The successful tenderer in the procurement for the Custodial Tenancy Deposit Protection Scheme – Legacy Pool.



**Appendix A - Historical data on e-mails and general correspondence received
(for information purposes only)**

Date	Emails Received	General Correspondence
Aug 14	17,347	681
Sept 14	18,328	799
Oct 14	15,221	756
Nov 14	12,562	765
Dec 14	10,380	667
Jan 15	11,494	655



Appendix B - Historical data on ADR Cases (for information purposes only)

The cumulative number of ADR cases (April 2007 to Jan 15) is 39,261

Date	ADR Cases collecting evidence for	ADR Cases Adjudicating On	ADR Cases Adjudicated on	Cumulative Total
Oct 14	1265	708	845	36,556
Nov 14	1284	660	846	37,402
Dec 14	953	801	941	38,343
Jan 15	922	632	918	39,261