



Local Housing Allowance Safeguard Policy

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1. BACKGROUND

Local Housing Allowances (LHA) were introduced from April 2008.

Under the LHA arrangements, Housing Benefit may be made to a person's landlord where the Council considers that the tenant is vulnerable and likely to have difficulty in relation to managing his financial affairs. The intention is to prevent people who are likely to experience difficulties from falling into rent arrears. In addition payments can be made direct to a landlord if they are willing to reduce the rent charged to the relevant LHA rate.

Claimants who are likely to have difficulty managing their financial affairs are referred to as ones that require safeguarding. Some claimants may want to be classed as such simply because they would rather have payments made direct to their landlord. However the safeguarding arrangements cannot be used to circumvent the fact that there are no provisions for tenants to request direct payments because it is convenient or they would prefer it.

In most cases, the Council will ask for evidence from professional bodies such as doctors, social workers, probation officers, landlord to establish that it is appropriate to make payments to the landlord under the safeguarding provisions. Each case therefore needs to be investigated when considering representations that a tenant is likely to have difficulty managing their affairs.

Similarly, the Council has to distinguish between claimants who choose to manage their finances in a less than organised way and those that genuinely have difficulty managing their affairs.

2. AIM OF POLICY

The aim of the Safeguard Policy is to enable *vulnerable tenants:

- To secure tenancies;
- To retain tenancies and;
- To ensure that landlords are willing to accept vulnerable persons as tenants.

*Vulnerable tenants.

The law relating to the Local Housing Allowance does not provide a definition of vulnerable. The Department for Work and Pensions has provided guidance on how to decide if a customer is vulnerable.

The Council has a duty to make the vulnerability decision making process fair, consistent, easily understandable and easily accessible. The underlying intention of this policy is to ensure that payment of LHA is made in accordance with the relevant regulations and guidance, but also to deal with requests for payment direct to landlords in a manner that is administratively straightforward and does not cause any undue delay in the award and payment of Housing Benefit claims.

Unless we receive evidence to suggest otherwise, we will assume that all tenants receiving Housing Benefit under the Local Housing Allowance scheme will pay their rent. Consequently, we will normally make payment of

Housing Benefit to the tenant unless any of the other criteria for making payment to the landlord are met.

3. EXISTING PROVISIONS

- There are already certain circumstances where the Council has to pay Housing Benefit to a person's landlord. Regulation 95(1) of the Housing Benefit Regulations 2006 sets out that payment of rent allowance has to be made direct to the claimant's landlord where:
- The tenant has 8 weeks or more arrears of rent; or
- An amount of the claimant's IS/JSA (IB) is being paid to the landlord to meet rent arrears.

There are two exceptions to this rule:

- Where it is in the overriding interest of the claimant not to make payment direct to the landlord; or
- Where the landlord is not a "fit and proper" person (this only applies where the Council has a basis for doubting the landlord's probity in relation to Housing Benefit).

Eight-week arrears cases

Housing Benefit Regulation 95(1) states that payment has to be made to the landlord where a person is in rent arrears of 8 weeks or more (except where it is in the overriding interests of the claimant not to make payment to the landlord).

This is a mandatory provision and there is no discretion in this matter unless it is in the overriding interest of the tenant not to pay the landlord.

First payment to landlord

Councils have the discretion to make the first payment of Housing Benefit payable to the landlord and send it to the claimant. This option is considered if:

- The claimant has not paid their rent for the period covered by the payment; and
- It would serve the interests of the efficient administration of Housing Benefit.

The intention behind this provision is to safeguard public funds in cases where there may be a large sum of Housing Benefit involved (even if it was for less than 8 weeks' entitlement) and there is a risk that the claimant would fail to pay their rent.

It should be noted that only the rental element may be paid directly to the landlord and any "excess" will still be paid to the claimant (to a maximum £15 per week). However after April 2011 the £15, 00 excess will be abolished.

4. NEW PROVISION

Direct payment provision

Housing Benefit (Amendment) Regulations 2010 No 2835 and the Rent Officers (Housing Benefit Functions) Amendment Order 2010 No 2836 were laid before Parliament on 30 November 2010.

The amendment Regulations extend from 1 April 2011 the circumstances in which HB may be paid directly to the landlord for cases assessed under the LHA arrangements. Payment can be made to the landlord if the Council considers it will assist the customer to secure a new tenancy or retain an existing tenancy. For a tenancy to be secured or retained it is implicit that the rent should be affordable to the tenant.

The customer can only be accepted as being able to retain or secure a tenancy if the rent is at a level considered reasonable and can afford whilst in receipt of HB.

If the customer continues to have a shortfall which they cannot meet they will be unlikely to be able to meet their rental commitment and will be at risk of eviction. In these circumstances, they will not be able to retain the tenancy and so the safeguard will not apply.

It is intended that, once direct payments are being made under the new safeguard, they will continue unless the rent becomes unaffordable. Once a decision to pay HB to the landlord, we will advise the customer and the landlord. Additionally, both the customer and their landlord need to be aware that direct payments are conditional on the rent being kept at an affordable level whilst the customer remains at the address. Any increase in the rent could affect the decision to make payments to the landlord.

The council will require evidence from the landlord to pay housing benefit direct under this provision.

5. INDICATORS THAT A CLAIMANT MAY REQUIRE SAFEGUARDING

Application forms for safeguard payments

An Safeguard application form must be completed by the tenant, landlord or tenants representative in writing for consideration of a safeguard payment

Supporting Evidence

We should gather information and evidence to enable us to make a decision regarding safeguard payments.

Both parties will be written to upon receipt of the safeguards application form regarding non payment of rent if required.

Evidence for non payment of rent must be supplied within 7 days, in order to avoid any further rent arrears. A Benefits Officer may be required to visit

the customer to obtain the relevant information from the tenant when deemed necessary.

Please refer to the criteria list for the sources of evidence required.

The time limit for supplying information will be 14 days in all other circumstances unless longer time is deemed necessary.

If requested information is not provided we must make a decision based on the known facts. We need to consider if the tenant fails to supply the information that this may indicate that safeguard payments would be in the best interests of the tenant.

This is not intended as an exhaustive nor prescriptive list.

The following list contains some of the characteristics that may indicate that the customer is likely to have difficulty in paying their rent. Criteria	Written evidence required
Learning disabilities Medical conditions mental illness schizophrenia depression Alzheimer's disease Senile dementia	GP Social worker Supporting people/care worker provider Department of Work and Pensions Citizens Advice Bureau GP Social worker Supporting people/care worker provider Department of Work and Pensions Citizens Advice Bureau
Addictions drugs gamblers alcohol	GP Social worker Supporting people/care worker provider Department of Work and Pensions Citizens Advice Bureau Probation Services
People fleeing domestic violence care leavers single homeless prison leavers	Social worker Welfare organisations Probation officers Women's refuges
Inability to speak or English or illiteracy	In order to determine whether a person may be illiterate in either respect, the Council may first look at how a person's current claim (or any other recent claim) was made. Enquiries may have taken a longer period than is normal to resolve and this should be taken into account if this is due to the claimant's illiteracy.
Those receiving assistance from a homeless or LA housing department	Homeless charity LA homeless section
Severe debt problems	Court Services Support organisations CAB Financial help groups Solicitors
Those receiving support from the Supporting People scheme	Social Services Support organisations
Undischarged bankruptcy	Court Service Letter from creditors Undischarged bankruptcy Court
Inability to obtain a bank account	Banks Money advisers - letter from a bank showing that the claimant has been refused a bank account
New Direct payment provision – Securing tenancy.	Evidence from Landlord that rent liability has been reduced to the relevant LHA rate. Evidence reduction in the contractual rent.

6. Probability That the Tenant Will Not Pay Rent

The Regulations

The Housing Benefit (Local Housing Allowance and information sharing) Amendment Regulations 2007 amends Regulation 96 of the Housing Benefit Regulations 2006. These regulation set out the circumstances where payment of Rent Allowance may be made direct to a person's landlord.

Regulation 96(3A)(b)(ii) states that payment of a rent allowance to a person's landlord may be made where the authority considers that the it is improbable that the claimant will pay his rent.

The phrase is improbable means that there must be a degree of probability that the tenant will not pay his rent. It is not sufficient to conclude that there is a possibility that the tenant may not pay his rent. Many tenants, regardless of their benefit status, carry a risk that they may not pay their rent. Each case needs to be investigated when considering representations that it is improbable that the claimant will pay his rent.

Possible indicators that a tenant is unlikely to pay their rent

Where a representation is received, but without evidence that a person is unlikely to pay their rent, payment will be made to the claimant.

The actions taken by the claimant once this payment has been received may be treated as further evidence to determine whether a claimant is likely to pay his rent.

A history or rent arrears is more relevant as this indicates that the tenant may not place great importance on paying their rent, the consideration that we are required to make is whether a person is unlikely to pay their rent, not whether a person has a history of failing to make other payments or has experienced debt problems.

7. Dealing with representations

Claimants

Depending on the details of the request, it may be appropriate to ask a visiting officer to collect supporting evidence where the safeguards policy is being applied. Alternatively, the claimant should be asked to provide information themselves or give authority to contact other agencies such as GPs.

In the event that the claimant is not able to answer questions appointee action will be considered.

It would be unusual for the claimant himself to suggest that it is improbable that he will pay his rent. It is more likely that such evidence will be provided by a landlord (past or present) or a third party who can demonstrate experience or knowledge of the claimant's behaviour. In a number of instances this will be supported by information already held by the Council.

Friends and family of the claimant.

All representations must be in writing supporting by detailed reasons and, where available, evidence of why the claimant is considered likely to have difficulty managing their affairs or is unlikely to pay their rent.

Information provided by relatives and friends may provide useful information which may support other evidence but will not usually be accepted without other evidence.

It should be noted that it may not be possible to discuss the circumstances of the claim with family and friends unless the claimant has given consent.

The landlord.

All representations must be in writing supported by detailed reasons and, where available, evidence of why the claimant is deemed to be likely to have difficulty managing their affairs or is unlikely to pay their rent. It will not be possible to conclude from the landlord's representations alone that the tenant should be treated as vulnerable or unable to manage paying their rent.

A past or present landlord will have first hand experience of whether a tenant has paid their rent in the past.

A tenant who has persistently failed to pay their rent without a good reason should be considered to be unlikely to pay their rent to their landlord. However, there may be good reasons why the claimant has not made rent payments such as a dispute with the landlord over repairs. The Council will not get involved in such disputes but make a decision on payment.

8. Making a decision

The Council must decide when there is sufficient information and evidence to make a decision on safeguarding. Payment of Housing Benefit should not be delayed pending such a decision and the regulations allow payment to be made for up to eight weeks whilst a decision about safeguarding is made.

Where it has not been possible to satisfactorily establish the facts of the case because the claimant has failed to co-operate in the enquiries that have been made, The Council must decide whether or not that failure to co-operate in itself demonstrate a need for safeguarding.

In some cases, it will be evident whether the person is vulnerable and in others it will be necessary to reach a decision by balancing the facts.

Claimants deemed to be in need of safeguarding should be encouraged to seek support and advice, either elsewhere in the Council or from voluntary groups, to enable them to be in a better position to manage their financial affairs. This could be anything from money advice to tackling more fundamental underlying issues.

9. Notification of decision

Making a decision

A Benefits Officer will gather the information in order to make an informed decision in accordance with the safeguard policy. Benefits Officer must decide whether the rules for under the safeguard policy have been satisfied. Evidence can be taken from different sources and does not have to be addressed directly to the council.

Degrees of weight should be attached to each source of information. Evidence from the claimant, their friends and family is important, but it should be remembered that some claimants might want to do everything possible to secure direct payment to their landlord and thus avoid the responsibility that the reforms promote.

Similarly, landlords have a valid role to play, but their representations would require verification from another source.

Where arrears have arisen over a period when Housing Benefit did not meet the full rental liability and the tenant was not able to make up the shortfall the tenant cannot automatically be assumed to be unlikely to pay his rent. The Benefits officer will consider any arrangements that the tenant has made to pay his rent. The Council will also consider what attempts the landlord has made to collect their rent as a lack of action can be seen to have contributed to the arrears.

Where there is insufficient evidence that it is likely that a tenant will fail to pay his rent we will make the payment to the tenant. What the tenant chooses to do with this payment will be considered as evidence in determining the likelihood that future payments will be used to pay the rent.

Notifying the relevant person of the decision The Benefits Service will inform all parties of the outcome of their application within 14 days of receipt of all the relevant information. Where the application is unsuccessful, we will set out the reasons why the decision was made and explain the right of appeal.

Where the application has been successful, the Benefits Service will advise the customer of the decision.

Reconsiderations and Appeals

Decisions to whom we pay benefit are appealable through the normal appeals process. Reconsiderations/Appeals should be carried within 28 days of the request for reconsideration / the appeal being received. Appeals will be forwarded to the Tribunal Service within 28 days of the appeal being received.

Reviewing a Decision

In all cases, the Benefits Service will decide the length of time for which a payment will be made under the safeguard policy. This decision will be made by an Benefit officer.

Each case will be regularly reviewed depending on the basis of the evidence supplied and facts known. The minimum period for which the Benefits Service will review the case will be 3 months. The maximum period for review will be between 6 – 12 months depending on the severity of the individual's circumstances

10. Consultations on the LHA Safeguard Policy

Landlords were consulted on the proposal to pay benefit direct at the Landlord Forum as well as the Landlord Accreditation Event on 9 February 2011.