

Local Housing Allowance

Safeguard Policy (Draft) **April 2011**



Introduction and Background

From April 2008, Local Housing Allowance (LHA) replaced Housing Benefit (HB) for most tenants renting property in the private sector. The change affects anyone making a new claim for benefit, or changing his or her address.

The Department for Work and Pensions (DWP) introduced LHA to provide tenants with more choice and responsibility about where they live and how they manage their own finances. The two main features of the scheme are:

- **Choice:** LHA is paid at a flat rate, based on family size and personal circumstances. Under the previous rules, the rate of HB depended on a valuation made by the Rent Service, based on the location, size and condition of the property. Under LHA, tenants have a greater choice about where to live, without this affecting their benefit.
- **Personal responsibility:** In the majority of cases, LHA is paid direct to the tenant. Under the previous rules, the tenant could choose to have their HB paid to their landlord. The DWP firmly believe that tenants should be responsible for receiving LHA themselves and paying their own rent, reflecting the way other welfare benefits are paid. Giving tenants responsibility for their own finances may improve their opportunities for accessing work.

Purpose of the policy

The DWP recognise that paying LHA directly to the tenant is not always appropriate in every case. Issues of vulnerability and the risk of a tenant losing their tenancy or not paying their rent should be safeguarded against. The purpose of this document is to set out the Council's policy for determining the circumstances where payments of LHA will be made to the landlord, instead of the tenant.

Aims and objectives

There are three main reasons why the Council may need to consider this policy:

- Where the tenant is vulnerable
- Where it is unlikely that the tenant will pay their rent
- Where payments to the landlord will assist the tenant in securing or retaining their tenancy.

The aims and objectives of this policy are to:

- Provide a safeguard for the most vulnerable tenants and reassure them that their benefit and rent will be paid
- Help prevent rent arrears and tenants being put at risk of eviction
- Help tenants secure or sustain their tenancy
- Reassure landlords that their rent will be paid if they have vulnerable tenants or if they are approached by vulnerable tenants

- Help put tenants in touch with other agencies where appropriate and give people the opportunity and support to manage their own tenancies and finances
- Ensure that Council officers make reasonable, fair and consistent decisions
- Promote a transparent and simple process that is widely understood
- Treat each case individually and avoid making assumptions about people's situations.

This policy is not designed to:

- Replace, supersede or conflict with existing policies and strategies to deliver support to tenants who need help with maintaining their tenancies and help with being responsible for their own income and expenditure.
- Be used as a blanket policy by Council officers for determining the vulnerability of tenants.
- Be used by landlords to get around the aims of the LHA.

Vulnerable tenants

The term '*vulnerable*' in this context is where the tenant, or prospective tenant, is homeless, at risk of homelessness, or where the Council considers that the tenant is likely to have difficulty managing their affairs and may fall into rent arrears.

The phrase '*is likely*' means that it will be more likely than not that the tenant will be unable to manage their affairs. It may not be sufficient to conclude that there is a *possibility* that the tenant may have difficulty managing their affairs. In addition, the Council will not pay the landlord direct, just because tenants in certain circumstances carry a *risk* that they may be unable to manage their affairs.

The Council will investigate each case thoroughly when considering representations that a tenant is vulnerable. In some cases, the Council may require supporting evidence from professional bodies such as doctors, social workers or probation officers, before deciding that someone is '*vulnerable*'.

However, where the Council has been unable to establish the facts because of the tenant's failure to co-operate or due to a lack of response from the tenant, the Council will consider whether this failure to co-operate or respond does not in itself constitute vulnerability.

Possible indicators that a tenant may be vulnerable

The following may indicate to the Council that a tenant is vulnerable, although decisions will be made on a case by case basis, depending on the individual circumstances of the tenant:

- People with learning disabilities
- People with mental health problems
- People with a medical condition that is likely to seriously impair their ability to manage their affairs
- People with literacy problems

- People whose first language is not English
- People with an addiction to drugs, alcohol or gambling
- People with severe debt problems
- People who are unable to manage their tenancy without support, such as ex-offenders or care leavers
- People who are homeless or at risk of homelessness
- People who are unable to obtain a bank account.

Tenants unlikely to pay their rent

The LHA regulations allow for payments to be made directly to a landlord where the Council considers that *'it is improbable that the claimant will pay his rent'*. The intention is to protect tenants who are likely to act irresponsibly from falling into rent arrears. The Council will balance the aim of the LHA scheme to encourage tenants to take responsibility for their rent payments with the need to ensure tenants can maintain their tenancies and that landlords are not damaged financially.

The phrase *'is improbable'* means that there will be a degree of probability that the tenant will not pay their rent. It will not be sufficient to conclude that there is a *possibility* that the tenant may not pay their rent or that, because all tenants carry a *risk* that they may not pay their rent, the Council will pay the landlord direct.

The Council will investigate each case when considering representations that it is unlikely that the tenant will pay their rent. In some cases, the Council may require supporting evidence, before deciding that a tenant is *'unlikely to pay'* their rent.

The Council will ensure that the *'unlikely to pay'* condition is not used to circumvent the fact that there is no longer a provision for the tenant to request direct payments to their landlord.

Possible indicators that a tenant is unlikely to pay their rent

A history of rent arrears could indicate that a tenant may not place great importance on paying their rent. This could be in their current tenancy, or in a recent previous tenancy, including a former Council or Housing Association tenant. In these cases, the Council will pay LHA to the landlord on the basis that the tenant is unlikely to pay their rent in the future.

Where there is no history of rent arrears, possibly due to the fact that until now the tenant's landlord has been in receipt of direct HB payments, the Council will decide whether to pay LHA to the landlord, on a case by case basis, depending on the individual circumstances of the tenant.

However, where LHA is paid to the tenant, the Council will remind the tenant of their responsibilities to pay their rent on time.

Where a person has always paid their rent on time, but has other financial problems, the Council will usually make payments to the tenant, as there will be no evidence to suggest that they will not pay their rent. However, where a person has not previously

had a rental liability and so cannot have failed to pay their rent, other arrears or debts may be taken into account. In situations where HB has always been paid direct to the landlord, other financial dealings may also be taken into account.

Where the tenant has indicated they have debt problems, their credit history may be a useful indicator. Arrears of priority and non-priority debts could all indicate that the tenant does not manage their money sufficiently well and is unlikely to do so in the future. Greater emphasis will be placed on the non-payment of priority debts, such as arrears of rent, mortgage, Council Tax, water rates, gas or electricity.

The Council may take into account records of arrears and in particular where records show persistent arrears or a failure to keep to arrangements that have been made. In particular, the Council may examine its own records in relation to rent, Council Tax and HB overpayments. The Council may also consider any arrangements the tenant has made to pay their rent arrears and whether they have kept to those arrangements.

Where a tenant has been advised to obtain a bank account, but refuses to do so, payments of LHA cannot be withheld and the Council may decide to pay the landlord direct. In making this decision, the Council will act in the best interests of the tenant, to ensure their rent is paid and that the landlord is not financially damaged. The Council will also continue to encourage the tenant to obtain advice and support with opening a bank account.

Assisting the tenant in securing or retaining a tenancy

From April 2011, the Council can also make payments of LHA to the landlord, where it considers that it will assist the tenant in securing or retaining a tenancy. The intention of this new provision is to:

- Continue to make accommodation available to tenants at a time when LHA rates are reducing, and
- Encourage landlords to make rents affordable to tenants in receipt of LHA.

What is an affordable rent?

In the majority of cases, a rent will be considered affordable if it is at or below the LHA rate which applies to the tenant. However, where the tenant has sufficient resources to make up a shortfall in rent (for example, from capital), this will also be considered to be affordable.

A rent will be considered as unaffordable where the tenant has a shortfall in their rent for which they have no resources to meet.

Where a request to pay LHA to the landlord is made, to assist the tenant in securing or retaining a tenancy, but the rent is unaffordable, the Council will also request information as to how the tenancy will be sustainable. In all cases, the Council will act in the best interests of the tenant and in accordance with the aims and objectives of this policy. However, the overriding factor will be whether the decision will alleviate or prevent homelessness in the short-term.

In any case, if a tenant is having difficulty in securing or retaining their tenancy, and there is a risk of homelessness, the Council will consider paying LHA to the landlord under the '*vulnerability*' provision.

In addition, if a tenant is having difficulty in securing or retaining their tenancy where the rent is unaffordable, the Council will consider paying LHA to the landlord under the '*unlikely to pay*' provision.

Where possible, the Council will encourage and support tenants to negotiate with their landlords to make their rents affordable to them. However, there is no basis on which the Council can insist that the landlord makes a rent affordable to a tenant.

Who can make a request to pay LHA to the Landlord?

Requests to pay LHA to the landlord can be made by the tenant, the landlord, or a third party such as the Citizens Advice Bureau, First Stop Darlington or Bridge2Home. Requests can be made in writing, by e-mail or verbally.

In some cases, the Council will use its own records to determine if LHA should be paid to the landlord, even where no request has been made. For example, the Council recognises that it may be difficult for some tenants to present themselves as vulnerable and it may therefore use its own records to determine if LHA should be paid to the landlord.

In addition, where the Council is aware from its own records that the tenant has previously had rent arrears, it may decide to pay LHA direct to the landlord without a request being made.

A Housing Options Advisor or other Council Officer may recommend payments of LHA are made to the landlord, based on their own records, or previous experience of the tenant.

Requests from the tenant

Requests to pay LHA to the landlord can be made by the tenant, their carer, representative or advocate. However, persons who have been appointed to act on behalf of a tenant who is "unable for the time being to act", will not be classed as vulnerable or unlikely to pay their rent. Nor will the tenants they act for, until such time as they cease to have an appointee acting for them.

Where the tenant has requested LHA payments to the landlord, but further information is required, payments of LHA will be made to the landlord in the interim.

Requests from the landlord

A past or present landlord may have first hand experience of whether a tenant has paid their rent in the past, although the Council may request evidence of this. However, only recent evidence to show that a tenant has persistently failed to pay their rent without a good reason will be considered. The Council may also contact the tenant where the landlord has requested LHA payments.

Where the landlord has stated that direct payments of LHA will help to secure or sustain a tenancy, the Council will accept this position if the rent is affordable to the tenant, or if the decision will prevent or alleviate homelessness. Otherwise, the Council may make further enquiries and may also contact the tenant.

Where the landlord has requested LHA payments, but further information is required, the Council will decide whether payments of LHA should be made to the tenant or the landlord in the interim, on a case by case basis.

The Council will not consider speculative requests from landlords, on the basis that the tenant has missed, or has been late with one payment of rent. However, in these cases, the Council may contact the tenant. For example, non-payment of rent could suggest that the tenant has left the property without informing the landlord or the Council. In these cases, a visit to the property may be arranged.

Requests from third parties

Where a third party, such as the Citizens Advice Bureau, First Stop Darlington or Bridge2Home, has stated that the tenant is vulnerable, unlikely to pay their rent, or requires assistance with securing or sustaining a tenancy, the Council will accept this position and make payments of LHA to the landlord. However, the Council may make further enquiries and may also contact the tenant before making a decision.

Where a third party has requested LHA payments, but further information is required, payments of LHA will be made to the landlord in the interim.

Decision making

Once a decision has been made to pay LHA to the landlord, the Council will notify the tenant and landlord in writing (and other third party if relevant and with the tenant's consent).

In all cases where further information is required to make a decision, the Council will not delay the processing or payment of the LHA claim.

Duration of the decision and reviews

In all cases where the Council has decided to make LHA payments to the landlord, it will also decide when this decision should be reviewed. The date of the review will relate directly to the reason for paying LHA to the landlord.

Reviewing 'vulnerability' decisions

Some decisions will be relatively short-term (up to 6 months), for example where the tenant requires help opening a bank account or is on a waiting list for a housing related support provider.

For most other decisions relating to vulnerability, the Council will review its decision at longer intervals, usually every one to three years. In some cases, for example where a person has a long-term medical condition or disability, the Council may decide that the vulnerability is likely to be permanent and will not require reviewing.

In some cases the Council may seek the advice of appropriate professional bodies or voluntary organisations when reviewing its decisions.

Once evidence has been received that a tenant is no longer vulnerable and with agreement with the tenant, payments of LHA will be made to the tenant. In all cases, the Council will act in the best interests of the tenant and in accordance with the aims and objectives of this policy.

Reviewing 'unlikely to pay' decisions

For most decisions relating to the unlikely to pay provision, the Council will review its decision every one to three years, depending on the tenant's history of rent arrears and the current level of arrears. This will usually involve asking the landlord about the current level of arrears and what efforts the tenant has made to repay these.

Where the tenant still has rent arrears, the Council will usually decide to continue to pay LHA to the landlord. However, even where the tenant has repaid their arrears, the Council may still decide to continue to pay LHA to the landlord. Each decision will be made on a case by case basis.

If the landlord fails to provide the Council with sufficient evidence that the tenant is still unlikely to pay their rent, or fails to respond to enquiries, the Council may decide to make future payments of LHA to the tenant.

In some cases, the Council may decide that the tenant's inability to pay their rent is likely to be permanent and will not require reviewing.

Reviewing 'assisting the tenant in securing or retaining a tenancy' decisions

Most decisions will last for the duration of the tenancy, or whilst the rent remains affordable to the tenant (if applicable).

Therefore the Council will only review its decision where:

- The tenancy ends
- The rent no longer becomes affordable to the tenant

Disputes and appeals

Where the tenant or landlord disputes a decision about payments of LHA, the Council will review its decision and notify the outcome to all affected parties.

Alternatively, the tenant or landlord can appeal the decision and this will be conducted in accordance with regulations for revisions and appeals.

Signposting to other organisations

Where a tenant has declared that;

- they are at risk of homelessness, or
- they have severe debt problems, or
- they have a need for monetary advice or housing related support, or
- they have been unable to open a bank account,

the Council may signpost the tenant to a relevant organisation who will be able to assist them. These could include:

- The Council's Housing Options team, Welfare Rights team or Supporting People team
- The Citizens Advice Bureau
- Welfare Rights groups or debt advice agencies
- Tenancy Support organisations
- Other voluntary organisations

Circumstances where LHA must be paid to the landlord

The HB regulations state that payments are to be made to the landlord where;

- a tenant is 8 weeks or more in arrears with their rent, or
- payments are being made direct to the landlord from other income related benefits to clear rent arrears,

except where it is in the overriding interests of the tenant not to make payments to the landlord. This is a mandatory provision for direct payment and unless it is in the overriding interest of the tenant not to do so, there is no other discretion in this matter.

Where the landlord has stated that the tenant is 8 weeks or more in arrears with their rent, the Council may request evidence of this before making direct payments.

For the purpose of this provision, an amount of rent becomes in arrears when the due date for payment has passed. This includes rent charged in advance by the landlord.

LHA already paid to the tenant cannot be paid again to the landlord for the same period.

All affected parties will be notified in writing of the Council's decision and will be able to dispute the decision, or appeal.

In all cases where the Council has decided that a tenant is 8 weeks in arrears of their rent, they will also decide when this decision should be reviewed. If the tenant repays all or some of their arrears and are no longer 8 weeks in arrears with their rent, the Council will consider if the '*unlikely to pay*' provision applies.

Other considerations

Where it appears to the Council that circumstances may have been contrived in order to secure direct payment of LHA to the landlord and circumvent the aims and objectives of this policy, the normal provisions outlined in this policy will not apply.

Where the Council considers that the landlord is not 'fit and proper', in accordance with the HB regulations, no payments of LHA will be made direct to the landlord under the provisions of this policy.

In these circumstances the Council will decide who the most appropriate person to pay the LHA will be (other than the landlord), which is in the best interests of the tenant.