

## Safeguard policy

### Introduction

Local Housing Allowance (LHA) affects any tenant who enters into a deregulated private tenancy; a deregulated tenancy is one that commenced after January 1989. The new rules will not apply to Local Authority tenants, tenants of registered social landlords e.g. Housing Association tenants, tenants who have a registered or 'fair' rent, tenancies which commenced before January 1989, protected cases such as supported housing provided by social landlords, charities or voluntary organisations, who also provide care, support or supervision or tenancies in caravans, houseboats or hostels.

The national roll out of Local Housing Allowance removes the right from customers to choose to have their Housing Benefit payments sent directly to their landlord. This change in national policy is a fundamental part of the reform of Housing Benefit and will support the Department for Work and Pensions (DWP) specific aims of Personal Responsibility and Financial Inclusion.

These aims bring with them increased risk that some customers may not or will not use their Housing Benefit entitlement to pay their rent. This increased risk however, only applies to a minimal section of our customers as research has shown in the area's where LHA has been trialled that customers receiving Housing Benefit place paying the rent as a high priority<sup>1</sup>. It should not be assumed by any party at any time that Housing Benefit recipients place any less importance on paying their rent than non Housing Benefit recipients.

The purpose of this policy is to protect our customers by making payments direct to the landlord in cases where we as a Local Authority determine it unlikely (based on all the factors and evidence provided) that they will pay their rent by making payments direct to the landlord. It will also enable us to ensure customers who want to be classed as likely to have difficulties managing their financial affairs because they would prefer the ease of not having to pay the rent to their landlord are not excluded from their personal responsibility.

Successful adherence to this policy will:

- Provide protection for our most vulnerable customers by providing reassurance that that their rent will be paid
- Help prevent rent arrears and the risk of eviction
- Reassure landlords that the rent charged will be paid if they have or are approached by vulnerable customers
- Ensure customers who require support are put in touch with relevant agencies/support groups
- Promote and publicise this process to ensure confidence in the scheme

### The current requirements

At present Local Authorities (LA's) are required by law to make direct payment to landlords in prescribed circumstances, this obligation does not cease with the introduction of LHA. The circumstances where a LA is obliged to make direct payments to the landlord are when<sup>2</sup>:

- The tenant has rent arrears in excess of eight weeks; or
- The tenant is having deductions taken directly from their Income Support/Job Seekers Allowance which are being paid direct to the landlord to reduce rent arrears; or
- The tenant has vacated a property leaving arrears of rent.

All the scenarios above are subject to the landlord satisfying the 'fit and proper person' test.

<sup>1</sup> Local Housing Allowance Final Evaluation: The qualitative evidence of claimants' experience in the nine pathfinder areas

<sup>2</sup> Housing Benefit Regulations 2006 – regulation 95

<sup>3</sup> Housing Benefit Regulations 2006 – regulation 96

### **The requirements under LHA**

The rules in the current scheme do not change under LHA but the option for customers to request payment direct to the landlord has been removed. In its place the DWP have authorised LA's to exercise discretion to pay the landlord direct if the LA decides that the tenant is vulnerable.

LA's can decide to make payments direct to the landlord at their discretion when they consider<sup>3</sup>:

- The customer is likely to have difficulty managing their financial affairs; or
- It is improbable that the customer will pay their rent.

An outline of the circumstances and factors to be considered when making a decision following representations for direct payment to the landlord are contained later in this document.

It should also be noted that at no time will a blanket policy be applied to any customer or section of customers, all representations made will be decided individually and on their merits. The details listed below are to be used as guidance when making a decision and are only some examples of factors to be considered. In no way does this document constitute a comprehensive guide to decision making or an exhaustive list of circumstances.

### **Representation**

Representation must be made in writing for us to consider whether a customer is likely to have difficulty managing their financial affairs or whether it is improbable that the customer will pay their rent. This representation does not necessarily have to be made by the claimant but must be signed by the claimant (or an appointee).

Representations can be made from people including:

- The tenant
- Friends and family of the tenant
- The landlord
- Welfare groups (including Money Advisors)
- Social Services
- GP's
- Probation Officers
- Job Centre Plus
- Pension Service
- CAB representatives
- Support Workers

One of the key aims of the reform of Housing Benefit is to promote Personal Responsibility, because of this aim it is important we ensure only customers who may have genuine difficulties managing their financial affairs have their Housing Benefit payments paid direct to the landlord.

<sup>1</sup> Local Housing Allowance Final Evaluation: The qualitative evidence of claimants' experience in the nine pathfinder areas

<sup>2</sup> Housing Benefit Regulations 2006 – regulation 95

<sup>3</sup> Housing Benefit Regulations 2006 – regulation 96

## Issues to be considered

In order to ensure we identify customers who genuinely fall into this category, outlined below is guidance on some of the indicators and evidence to be considered. Whenever considering a request we should always ascertain how the customer's other personal matters and finances are managed.

- **Learning disabilities** – people with severe learning difficulties will normally have appointees to help manage their financial affairs. When considering customers with less severe learning difficulties we will seek and consider evidence from people/groups including:
  - Care workers
  - GP's (unless the GP charges for the information)
  - Social Services
  - Other qualified medical practitioners
  - Government departments
  - Supporting people teams
- **Medical conditions** – we must consider any condition that may impair a person's ability to manage on a day to day basis. We will consider both physical conditions and mental illnesses e.g. schizophrenia, depression, age related mental deterioration such as senile dementia and Alzheimer's disease. We will seek and consider evidence from people/groups including:
  - Care workers
  - GP's
  - Social Services
  - Supporting people teams
- **Illiteracy** – this could take the form of reading, writing or financial illiteracy. We must consider factors including how any previous claim was completed and whether the customer has a history of delaying providing requested information. We will seek and consider evidence from people/groups including:
  - Care workers
  - Welfare organisations
- **Inability to speak English** – representation is likely to be made by a third party but on its own would not necessarily mean the customer is unlikely to manage their financial affairs. We will seek and consider evidence from people/groups including:
  - Welfare organisations
  - Ethnic minority link groups
- **Drug / Alcohol / gambling dependency** – all factors must be considered with supporting evidence. For example, someone with a gambling addiction may have difficulty managing their affairs but it may be a vital step in their rehabilitation that they take responsibility for managing their own affairs. We will seek and consider evidence from people/groups including:
  - Care workers
  - GP's
  - Other qualified medical practitioners
  - Social Services
  - Supporting people teams
  - Probation services
  - Support organisations for people with addictions

<sup>1</sup> Local Housing Allowance Final Evaluation: The qualitative evidence of claimants' experience in the nine pathfinder areas

<sup>2</sup> Housing Benefit Regulations 2006 – regulation 95

<sup>3</sup> Housing Benefit Regulations 2006 – regulation 96

**Severe debt problems / un-discharged bankruptcy / inability to open a bank account** – all these factors could demonstrate an inability to manage financial affairs. We will seek and consider evidence from people/groups including:

- Court documents
- Financial help groups
- Solicitors
- Banks
- Money advisors

Where a tenant has experienced difficulty in opening a bank account, support and guidance will be available from the LA to assist in this process. This may be in the form of helping the tenant to open a basic bank account with a recognised high street bank or by referring the customer to the CAB.

The indicators above are more likely to apply to customers deemed unable to manage their financial affairs, customers determined improbable to pay their rent will have other indicators but account should be taken of the above.

Representations for customers improbable of paying their rent are more likely to come from third parties (such as the landlord) as it is unlikely that a customer will declare themselves unlikely to pay the rent. When considering these representations we should request and consider evidence such as:

- Rent arrears from the current or previous landlord(s)
- Arrears of utility charges
- Unpaid standing orders/direct debits
- Arrears of priority debts (i.e. rent, mortgage, Council Tax, water rates, gas, electric)

#### **Failure to provide supporting evidence**

Customers who fail to provide evidence to support their request must be considered carefully, failure to provide supporting evidence could show that direct payments are not necessary as there is no genuine need. However, the failure to provide the requested evidence could in itself prove that the customer has an inability to manage their affairs. When evaluating non-provision of evidence consideration should be given to the evidence requested, the efforts made to provide it and the possibility that a referral to an independent advisor may be appropriate.

#### **Reviewing decisions**

Most decisions made to pay the landlord direct will need to be reviewed at an appropriate interval, some decisions where the customer's situation is unlikely to change due to the long term nature of the situation may not warrant a review at all.

Most decisions should be reviewed after an appropriate period, for example, a decision to pay direct to the landlord made due to rent arrears in excess of eight weeks should be reviewed after eight weeks and if the arrears have reduced below the prescribed level, payment should revert to the tenant. Cases referred to independent advice agencies should also be reviewed as the provision of professional advice may lead to the customer being able to take on the responsibility of paying their rent.

All decisions following review will be made individually and on its merits.

#### **Appeal rights**

Any decision made to pay or not pay the landlord direct carries a right of appeal under The Housing and Council Tax Benefit (Decisions and Appeals) Regulations 2001. Both the landlord and tenant have the right to request a review of the decision or appeal directly against the decision of the LA. Any dispute of the decision will go through the LA's reconsideration process before being treated as an appeal.

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