

Background

The Department for Work and Pensions (DWP) has changed the rules for calculating the maximum rent used in assessing Housing Benefit claims, with effect from 7th April 2008. The Local Housing Allowance (LHA) is a scheme of Housing Benefit for people living in private rented sector accommodation, with some exceptions to the scheme including:

- Local Authority/Council tenancies
- Housing Association tenancies
- Supported accommodation provided by local authorities, social landlords, charities or voluntary organisations
- Tenancies that started before 15/01/1989
- Tenancies for caravans, houseboats, mobile homes and hostels
- Tenancies with substantial board and attendance

LHA is usually paid to the tenant. Under this scheme, a tenant can no longer request that payment is made directly to their landlord to cover the tenant's rent.

Payments of Housing Benefit under the LHA Scheme will normally be paid directly to the tenant into their bank account. The national roll out of LHA removes the right from tenants 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 DWP's specific aims of Personal Responsibility and Financial Inclusion. The LHA Scheme seeks to promote financial inclusion and to remove 'barriers to work' by placing greater financial responsibility onto tenants.

The Council have the discretion with the rules governing the LHA Scheme to make direct payments to the landlord - **where a tenant cannot pay, where they are unlikely to pay their rent or, from the 1st April 2011, we consider that it will assist the customer in securing or retaining a tenancy.**

Under these circumstances, it is the responsibility of individual tenants or their representatives to request that Housing Benefit payments be made directly to the tenant's landlord.

The Council **must** however, pay the landlord where:

- The tenant is 8 full weeks or more in arrears with their rent
- The tenant is having deductions made from their Income Support or Jobseekers Allowance to pay for rent arrears.

All the scenarios above are subject to the landlord satisfying the 'fit and proper person' test (see the heading 'Fit and proper landlord').

Policy Intention

The purpose of this policy is to protect tenants by making payments directly to their landlord in cases where the Council determines it unlikely (based on all the factors and evidence provided) that the tenant will pay their rent to their landlord. It will also enable the Council to ensure that tenants who want to be classed as likely to have difficulties managing their financial affairs are not requesting this simply because they would prefer the ease of not having to pay the rent to their landlord – excluding themselves from their personal responsibility. It will also look at the scenarios when the Council can pay benefit direct to the landlord to enable the tenant to retain or secure a tenancy.

Successful adherence to this policy will:

- Provide protection for the most vulnerable tenants by providing reassurance that their rent will be paid
- Help prevent rent arrears and the risk of eviction
- To sustain tenancies for the most vulnerable tenants
- Reassure landlords that the rent charged will be paid if they have or are approached by vulnerable tenants
- Ensure that tenants who require support are put in touch with the relevant agencies/support groups
- Work with landlords where the tenant consistently fails to pay the rent
- Enable the Council to make reasonable, fair and consistent decisions
- Promote and publicise this process to ensure confidence in the scheme
- Ensure that each case is treated individually and not based on assumptions about customers situations

The policy will ensure that the safeguards in place are applied correctly, to prevent the risk of tenants falling into arrears with their rent and losing their home due to eviction and to allay any fears that landlords may have regarding potentially vulnerable tenants and those who are unlikely to pay.

Each case will be considered on its own merits and this policy has been drafted for guidance in order to ensure that the authority acts in a transparent and consistent manner. In order to demonstrate this it is important that a good audit trail is maintained for each and every case, this of course means that sufficient evidence must be provided in order to make a decision, without evidence no such decision can be made.

The policy is not intended to:

- Replace support that may already be provided to tenants in managing their everyday affairs and finances
- Be used by landlords to avoid and abuse the aims and objectives of the LHA scheme
- Be a blanket policy for organisations providing support to private tenants
- Undermine the good work that is already being undertaken within other sections/departments of the Council

- Undermine the rights of tenants to directly receive Housing Benefit payments.

First Payment

Where the first payment of Housing Benefit is in excess of £1000 the Council can make the first payment to the landlord if it considers that it is in the customer's best interest. The Council will make subsequent payments to the customer.

Tenants who may have difficulty managing their financial affairs

The Council has the discretion to make Housing Benefit payments directly to a tenant's landlord if:

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

The Council's decision makers will consider if the landlord is a 'fit and proper person' to receive direct LHA payments.

Requesting Payment direct to the Landlord

Representations and evidence to support a request for Housing Benefit to be paid directly to a tenant's landlord can be made by any of the following:

- The tenant, their family and/or friends
- The tenant's landlord
- The tenant's GP
- The tenant's Probation Officer
- Other Council Departments – such as the Rent Deposit Scheme, homelessness or Housing Advice Officers, Social Services, Council Tax
- Welfare/Voluntary Organisations, including money advisors
- The Jobcentre Plus or Pension Service
- Supporting People Teams
- Homeless charities and organisations

All representations must be made in writing at the earliest opportunity, preferably on a '**Payment Direct to Landlord Form**' (available from our website or from our Customer Services Team).

When returning a completed '**Payment Direct to Landlord form**', the Council's decision makers will need as much information and supporting documents as possible in order to make a reasonable decision. This decision will be based on the circumstances of the tenant. Decision makers will need to consider either/or

on occasions both the causes and the effects, in any given case, of a tenant's circumstances.

The examples of supporting evidence given on the table below are intended purely as a guide and not a definitive list of possible indicators:

Grounds/Cause	Evidence to be obtained from:
Learning disabilities (less severe)	<ul style="list-style-type: none"> ▪ Care workers ▪ GP's ▪ Social Workers ▪ Other qualified medical practitioners ▪ Government Departments ▪ Supporting People Team
Medical Conditions those which impair a person's ability to manage on a day to day basis: e.g. mental illness (schizophrenia, depression, age-related mental deterioration such as early Alzheimer's or senile dementia)	<ul style="list-style-type: none"> ▪ Care workers ▪ GP's ▪ Social Workers ▪ Other qualified medical practitioners ▪ Government Departments ▪ Supporting People Team
Illiteracy or inability to speak English People unable to read, write or speak English may have greater difficulty in paying their rent. Consider the effect that this inability has rather than the inability itself	<ul style="list-style-type: none"> ▪ Welfare organisations ▪ Ethnic Minority link Groups
Addiction to drugs, alcohol or gambling	<ul style="list-style-type: none"> ▪ GP's ▪ Other qualified medical practitioners ▪ Care workers ▪ Social Workers ▪ Support organisations for people with addictions ▪ Supporting People Teams ▪ Probation Services
Persons fleeing domestic violence/single homeless (care leavers)/people leaving prison	<ul style="list-style-type: none"> ▪ Social Workers ▪ Probation Officers ▪ Women's refuges ▪ Support Organisations ▪ Supporting People Teams

Where a customer obtained a Private Tenancy with assistance from Hackney Council, such as through the rent deposit scheme, then Housing Options and Advice may have information and evidence that the Benefit Service could use to help support an application to pay the landlord directly.

Further information, following the initial request to pay the landlord directly, may be required and will be requested from the tenant or the person acting on the tenant's behalf.

A period of one calendar month will be allowed for supporting evidence and information to be produced by the tenant or person acting on their behalf.

Awaiting evidence to make a final decision.

When a request has been made to make payments direct and the Council needs further evidence to make a final decision, it can:

Temporarily make payments to the landlord for a maximum of eight weeks whilst it is gathering evidence to reach a decision about who to pay.

This is allowed under *HB Regulation 96 (3B) and HB(SPC) Regulation 773B)*

This prevents potentially continuing to pay a customer who could be deemed vulnerable.

When the evidence is submitted the council can either uphold the decision to pay the landlord or change the payments to the customer. The Council will inform the landlord and the customer of the decision.

Failure to provide supporting evidence

Tenants, or persons acting on a tenants behalf, who fail to provide evidence to support their request will 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 tenant has an inability to manage their affairs. When evaluating the non provision of evidence, consideration will 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.

Referral to other organisations

Rather than make payments directly to a tenant's landlord, and in keeping with the Government's intention of promoting financial inclusion and personal responsibility, the Council will encourage the tenant to seek advice and guidance from a relevant organisation who will be able to assist them in managing their finances. In the instances where a tenant has declared themselves that they:

- have severe debt problems, or
- have a need for monetary advice or housing related support, or
- have been unable to open a bank account,

The Council will refer a tenant to a relevant organisation such as:

- The Citizens Advice Bureau
- Welfare Rights groups
- Debt advice agencies
- Supporting people teams
- Tenancy support organisations
- Community Legal Advice services
- Other voluntary sector groups

The Council will enter into formal or informal arrangements (e.g. using Service Level Agreements) with these organisations for referral and signposting tenants. In all cases where the tenant is unable to manage their financial affairs because of debt problems, the inability to open a bank account or a housing related support need, the Council will work in partnership with all of the agencies listed above, to ensure the tenant receives the relevant advice and support, and that their difficulties are as short-term as possible.

The Council has also produced a banking advice pack that can be sent to the customer to help them open a basic bank account.

Supporting people

This policy is not intended in any way to undermine the principles of the Supporting people programme, which is to enable vulnerable people to manage their own tenancies and live as independently as possible. Vulnerable tenants may be receiving housing related support through an organisation funded by Supporting people. In these cases, budgeting skills and support to manage their own financial affairs may be a key part of the tenant's support plan.

In these cases, the Council will contact the support agency, care worker or Supporting people team for advice on whether to pay LHA to the tenant or direct to the landlord.

The LHA scheme will not apply to tenants receiving support in "excluded" tenancies, i.e. accommodation based Supporting people services. However, private tenants receiving floating support will be subject to LHA.

Tenants who are unlikely to pay their rent

The Council will always assume that a tenant will pay rent to their landlord unless there is evidence which suggests otherwise. Where evidence comes to light that a tenant is not paying a landlord their rent, the Council can make payments of Housing Benefit direct to the landlord – except where to do so would not be in the overriding interest of the customer or their family. An example of this is where the tenant is withholding rent from a landlord because of a dispute with the landlord over repairs to the property.

In considering whether to make direct payments to the landlord because it seems unlikely that the tenant will pay their rent, the Council will also look to see if the landlord is a 'fit and proper person' to receive direct payments.

The Council will distinguish between tenants who are genuinely unlikely to pay their rent and those who may claim that they are not likely to pay their rent because they would prefer not to take responsibility for paying it themselves.

Who will not be considered as an unlikely payer?

- People who have been appointed to act on behalf of a tenant who is 'unable for the time being to act' **and**
- The tenant that they act for, 'until such time as they cease to have an appointee acting for them
- Where it is the landlord who is the person likely to have difficulty managing his affairs. One example is where the landlord is unable to leave their house to collect the rent.

Requesting Payment direct to the Landlord

Requests to make payments directly to the landlord in respect of tenants who are unlikely to pay their rent are more likely to come from third parties (such as the landlord) When considering these representations, the Council will 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)

The examples of supporting evidence given on the table below are intended purely as a guide and not a definitive list of possible indicators:

Severe Debt problems/recent County Court Judgements (CCJ)	<ul style="list-style-type: none"> ➤ Financial help groups ➤ Creditors ➤ Courts ➤ Solicitors
Undischarged Bankruptcy	<ul style="list-style-type: none"> ➤ Court documents
An inability to open a bank account	<ul style="list-style-type: none"> ➤ Banks ➤ Money advisers
DWP deductions from Income Support or Jobseekers Allowance (Income based) – in respect of housing costs; service charge, utility bills	If there is evidence to suggest the debt is still outstanding
Customer in receipt of help from Supporting People Team	<ul style="list-style-type: none"> ➤ Information from Supporting People Team

	<ul style="list-style-type: none"> ➤ Social Services ➤ Support Providers
Customer receiving help from a homeless charity	<ul style="list-style-type: none"> ➤ From the Charity ➤ Homelessness Unit of the Council
Customer obtained the Private Tenancy with assistance from the Local Authority, such as via the rent deposit scheme.	<ul style="list-style-type: none"> ➤ Check with Option and Advice or Housing Needs whether the Customer has previously been evicted due to rent arrears.

Further information, following the initial request to pay the landlord directly, may be required and will be requested from the tenant or the person acting on the tenant's behalf. A period of one calendar month will be allowed for supporting evidence and information to be produced by the tenant or person acting on their behalf.

Making a decision

Based on all the evidence gathered the Council will decide whether making payments of Housing Benefit directly to the landlord is in the best interest of the tenant.

All persons affected by the decision will be notified in writing and where applicable, reasons for the decision will be given.

Appeals

The tenant or the person who has made the application or referral can ask the Council to review any decision made regarding direct payments of the Local Housing Allowance.

They can:

- Ask for an explanation of the decision
- Ask the Council to reconsider the decision
- Appeal against the decision

In all cases the person must contact the Council, in writing, with their reasons within one month from the date of the decision. The decision will then be looked at again.

Reviewing decisions

Most decisions made to pay the landlord direct will need to be reviewed at an appropriate interval, some decisions where the tenants situation is unlikely to

change due to the long term nature of the situation may not warrant a review at all.

Most decisions will be reviewed after a year. This also applies to eight weeks in arrears cases, unless the customer provides proof that they have cleared their arrears.

Cases referred to independent advice agencies should also be reviewed after 1 year 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.

When reviewing a claim paid under the safeguard policy the Council will always write to the affected parties.

If the claim is being paid due to rent arrears this means writing to both customer and landlord for evidence that the tenant is still in 8 week rent arrears. With rent arrears cases where there is no reply from either tenant or landlord, the Council will normally amend the claim to pay the customer.

Direct payments to assist the customer in securing or retaining a tenancy

From 1st April 2011 the LHA safeguard policy includes a new landlord direct provision which allows Councils to make payments direct to the landlord where they consider that it will assist the customer in securing or retaining a tenancy.

For a tenancy to be secured or retained it is implicit that the rent is affordable to the tenant. This will usually mean that the rent is set at or below the LHA rate that applies to the customer. If the Council does not consider that the rent is affordable, direct payments will not be made.

It has been made clear that this additional discretion is a temporary provision and has been introduced to reduce rents to offset the affect of the reduction in LHA rates.

When is a rent reasonably affordable?

The Council will accept that the customer is able to retain or secure a tenancy (and make direct payments) if the rent is at a level it considers they can reasonably afford when on Housing Benefit.

The Council will usually accept that a person can reasonably afford their rent if the rent is the same or lower than the LHA rate that applies to the customer in the month that the rent is reduced.

The Council may agree to pay the landlord direct, if the rent is slightly higher than the LHA, if the customer decides that they can pay slightly more than the LHA rate if they have other resources, for example, capital, or a adult son or

daughter who is able to make up the shortfall. However, the Council must be satisfied that the rent is affordable to the customer.

Evidence

Before a decision is made the Council will need proof that the rent has been reduced.

For existing tenants the Council would need to see either a written agreement from the landlord to vary the rent, or if the tenancy has been renewed, an agreement showing that the rent is lower than before.

If the Council is not satisfied that there has been a genuine reduction in the contractual rent then the safeguard would not be applied.

In the case of a new tenancy the Council needs to be satisfied that the rent has been reduced and is affordable or, if the property has not been let before, that the rent charged is affordable and the letting would not have been made without direct payments.

When is a decision reviewed?

Once direct payments are being made under the new safeguard they will continue unless the rent becomes unaffordable or the provision is withdrawn.

Decisions will be reviewed if the customer reports:

- a) An increase in their rent
- b) A change in circumstance that results in a change in the category of dwelling.

If the rent is increased before the anniversary of the claim and it is unlikely that the customer can afford to meet the increase, it would not be appropriate to continue to pay direct. However the Council would consider if any of the other safeguard provisions apply, or if the customer has arrears amounting to eight weeks or more.

If the rent increase coincides with the anniversary of the claim and the new rent is the same as the LHA rate applicable to the customer, or is at a level the council considers the customer is able to afford, Housing Benefit can continue to be paid to the landlord. If it is no longer affordable the Council will stop paying the landlord under this provision. However, the Council would consider if any of the other safeguard provisions apply, or if the customer has arrears amounting to eight weeks or more.

If there is a change in the category of dwelling to a higher room and the landlord increases the rent, the Council would need to consider if the increase is reasonable and affordable. For example does the property have more bedrooms than the customer was previously entitled to? Do their new circumstances mean that the property is now the right size for the household? If it is then the Council can continue to pay direct.

If there is a reduction in the category of dwelling that the customer is entitled to, the Council can continue to pay direct whilst the customer considers their options. The Council can consider a Discretionary Housing Payment (DHP) and suggest that the customer tries to renegotiate their rent or find a more suitable property to live in.

Who should apply for direct payments?

Application for direct payments under this provision should normally be made by the customer, but the Council should also consider requests made by:

- 1) The landlord
- 2) housing advice officers or the homelessness prevention team
- 3) welfare advice organisations, including money advisors

As with all direct payment provisions, if the customer is against direct payments, it is for the Council to make a decision that is in the best interests of the customer.

Eight weeks or more rent arrears

In the instance where a customer has reached rent arrears of eight or more weeks, the Council should arrange that payments of Housing Benefit are paid directly to a landlord – unless it is in the overriding interest of the customer not to or where the landlord is not a ‘fit or proper person’. This may include where the tenant is in dispute with the landlord, but the tenant must provide evidence of this.

Landlords should not wait for the eight week period of rent arrears to elapse before contacting the Council. They should contact us when the tenant is in four weeks arrears. Where a landlord advises the Council that their tenant has rent arrears but has not reached the point of eight or more week’s arrears, the Council will contact the customer to discuss non-payment of rent and to establish if the customer needs referral or help from a money advice organisation.

Rent is deemed to be in arrears once the contractual date for payment has passed. Therefore where a tenancy states that “rent is payable in advance”, the advance period also counts towards the 8 weeks rent arrears.

This guidance assumes that most private tenancy agreements make provision for rent to be paid on a weekly or monthly basis. Tenancy agreements which stipulate less frequent payment, for example, two monthly in advance, would have the effect of placing a tenant eight weeks in arrears before they have received any benefit.

If the tenancy states that rent is due "8 weeks in advance", and the Council have evidence during week one that the advance rent period has not been paid, the Council may pay the landlord on rent arrears grounds. However, if the Council feels that the agreement has been construed intentionally to obtain direct payments to the landlord it may consider that it is not in the tenant's overriding interests to make direct payments.

A landlord must provide a statement that shows the rent that is due, any payments that have been made and that the amount outstanding is in excess of 8 weeks. The Council must be advised of the exact level of arrears. In all cases the tenant will be contacted and given the opportunity to provide evidence that they have paid their rent and are not in 8 weeks rent arrears.

Where a tenant is eight or more weeks in arrears, it is recommended that landlords contact the Council's Landlord Liaison Team by fax or email at the earliest opportunity.

Landlords can send an email direct to landlords@hackney.gov.uk. Emails about a tenant being eight weeks in arrears with their rent, should have the following clearly marked in the subject line:

"URGENT 8 WEEKS IN ARREARS".

The requirement to pay directly is intended as a safeguard to protect vulnerable tenants from eviction due to arrears as well as protecting landlords and action may be taken by the Council if there is evidence that this safeguard is being abused by landlords.

Landlord / Tenant Disputes

It is not the role of the benefits section to get involved in disputes between landlord and tenant.

Where the landlord and tenant are in dispute over rent arrears, and the landlord has provided evidence of over 8 weeks rent arrears, it is up to the tenant to provide evidence establishing that the rent has been paid or after 14 days payments will be made to the landlord.

Outstanding Repairs

In the situation where the tenant is withholding rent due to a dispute over outstanding repairs to the dwelling, the Council may consider that it is not in the

overriding interest of the customer to make direct payment to the landlord even if the rent arrears are over 8 weeks. This would however only be considered in exceptional circumstances.

In order for the Council to continue paying the tenant, it would need evidence that the outstanding repairs had been reported to the landlord, and had not been fixed within a reasonable timeframe.

The tenant would need to provide evidence such as bank statements showing they are holding on to the Housing Benefit payments, so they can be passed on to the landlord when the dispute is resolved.

If they have used the Housing Benefit to carry out the necessary repairs themselves and this has pushed them into arrears, then the Council would need to see evidence such as invoices from builders confirming the money had been spent on necessary repairs to the property.

The Benefit Service should always advise customers who are withholding Housing Benefit to seek legal advice or visit an advice office like Citizens Advice or Hackney Law Centre, as this could jeopardise their tenancy agreement. However there is no obligation on them to do this.

If the evidence is not provided within one month then once the tenant is in more than 8 weeks arrears payment will be made to the landlord.

The benefit section will never advise a customer to withhold rent as this could jeopardise their tenancy.

Fit and Proper Landlord

The council can refuse to make direct payments to a landlord, if it is felt that the landlord is not a **'fit and proper person'** to receive direct payments of benefit.

What does 'fit and proper person' mean?

For Housing Benefit purposes the expression **'fit and proper person'**:

- Refers to the suitability of the landlord to receive direct payments of rent allowance; *and*
- Allows a Local Authority to refuse to make direct payments where it is satisfied that the landlord has been engaged in fraudulent HB activity. ***(Undesirable activity in a non-Housing Benefits matter, such as non-payment of Council Tax or parking fines, or not complying with Housing Act directives is not relevant)***

A landlord may be considered not to be a 'fit and proper person' if the landlord has been engaged in fraudulent Housing Benefit activity or, has acted to obtain Housing Benefit to which he or she was not entitled to.

The Council must take into account all relevant evidence. Aside from the Landlord having been engaged in fraudulent HB activity, the DWP suggest in the Guidance Manual (A6.2.00) that the Local Authority should consider if the landlord has habitually failed to:

- Report changes in tenants circumstances that he or she might reasonably been expected to know might affect their entitlement; *or*
- Repay an overpayment that the LA has decided is recoverable - despite the fact that a proper notification was issued and that the rights of review had been exercised or made available.

The above list is not complete; however any other evidence must be connected to Housing Benefit.