

Customer Services Group Benefits Section



**South Hams
District Council**

Local Housing Allowance Safeguard Policy

Last amended 6th March 2008

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Introduction

- ❖ The Local Housing Allowance (LHA) scheme in operation in the South Hams District commenced on 7th April 2008
- ❖ Local Housing Allowance does not replace Housing Benefit, but instead introduces a new way of calculating the amount of rent a tenant needs to pay. This will form the basis of their claim
- ❖ LHA is a part of the Governments wider Welfare Reform Act. Part of the intention is to assist those who need to claim from the benefits system with financial inclusion and personal responsibility for dealing with their affairs. The Government is using LHA to further these aims by ensuring payments will be made direct to the tenant in most circumstances. Prior to the introduction of LHA, a tenant could choose to receive payments or have them made direct to their landlord
- ❖ This Safeguard Policy is in place to clarify where (under Housing Benefit Regulations 95 & 96) payment may be made direct to the landlord. South Hams District Council's Benefit Section will support the aims of social/financial inclusion and personal responsibility, whilst accepting steps have to be taken to ensure fairness to tenants and landlords to prevent risks of rental arrears and possible evictions because of;
 - tenants who are vulnerable and not able to pay the rent themselves
 - tenants who have a history of rental arrears and who are 'unlikely' to pay if LHA were to be paid direct to themselves
 - tenants being 8 weeks in arrears with their current rental commitments
- ❖ This policy is not a blanket policy and every case will be looked upon impartially and evidence gathered from all appropriate parties and sources
- ❖ This policy should reassure both tenants and landlords that the Council has measures in place to safeguard the security of accommodation for those unable to deal with their own affairs and the payment of rent to landlords where the tenant will not do so themselves
- ❖ This policy is split in to three sections. The first deals with tenants who are eight weeks in arrears and the landlord requests payments to be made directly to themselves in accordance with Housing Benefit Regulation 95. The second two are where the Council has discretion under Housing Benefit Regulation 96 to make payments directly to the landlord
- ❖ The policy is not intended to replace support that may be provided to tenants in managing their everyday affairs and finances, or undermine the good work that is already being undertaken within other service areas of the Council, or undermine the rights of tenants to receive payment directly to them

Section 1

Tenant is eight weeks or more in arrears

- ❖ Landlords are encouraged to notify the Benefit Service at their earliest opportunity if a tenant is not paying their rent. South Hams Benefit Service will work with tenants and landlords and encourage them to seek support and advice with financial budgeting
- ❖ Housing Benefit Regulation 95(1) provides that 'except where it is in the overriding interests of the claimant', payment must be made direct to the landlord where either;
 - part of a payment of a tenants Income Support or Job Seekers' Allowance is being paid to a landlord, or
 - the tenant is 8 weeks in arrears with their rent (not including any amount asked for in advance)
- ❖ For us to make payment direct to the landlord under this Regulation we would want the Landlord to provide;
 - written evidence that the arrears of rent were 8 weeks or longer – the better the level of evidence provided with the request for direct payments, such as a rent book, the quicker a decision can be made.
- ❖ We would then;
 - contact the tenant to establish if there are any lawful reasons for the withholding of the rent. If so, it may be in the interests of the tenant to continue paying them direct
 - advise the tenant and landlord of our decision who will receive Local Housing Allowance payments. There are appeal rights over this decision
 - review the case every six months (or more frequently where circumstances dictate) to ensure that once the arrears are less than 8 weeks, payment goes back to the tenant
 - where the LHA received is greater than the rental payment we will consider paying the landlord all of the payment, until the arrears fall to less than 8 weeks
 - if this Regulation is required to be used twice against the same claimant, we would consider whether the payments should go direct to the landlord under Housing Benefit Regulation 96 (3A)(b)(iii)
- ❖ Data Protection does not allow us to discuss or disclose anything to a third party (which would include a landlord) where we do not have specific permission from the tenant. Whilst we will take information about arrears, we would not discuss anything about any claim that may have been made. The only decision the landlord would receive is whether we are going to pay the benefit direct and if not, why not. The tenant however would be entitled to see all representation made to us by the third party

Section 2

Tenant is likely to have difficulty managing their own affairs

- ❖ Housing Benefit Regulation 96(3A)(b)(i) allows the payment of the benefit to the landlord in circumstances where ‘the relevant authority considers that the claimant is likely to have difficulty in relation to the management of his financial affairs’
- ❖ The power conferred by this part of the Regulation is discretionary to make payments direct. However the phrase ‘*is likely*’ would mean more than a chance or possibility of difficulty. There must be a significant likelihood that there is a difficulty that would result in the non payment of the tenants rent, for the LHA payment to be made direct to the landlord
- ❖ The Council is not likely to pay direct to a landlord where the tenant is just not organised enough to pay their rent. We will be looking for evidence to be provided showing those who will genuinely have difficulty managing their affairs and for the purposes of this guidance we will term them as ‘vulnerable’
- ❖ There may be many indicators of ‘vulnerability’, although an indicator is not a guarantee of vulnerability. For example, an un-discharged bankruptcy is an indicator of a possible difficulty in dealing with financial affairs, but it is certainly not true that all un-discharged bankrupts are unable to deal with their own financial affairs. Also some of those who may be considered ‘vulnerable’ may prefer to cope on their own, with the support and assistance of friends and relatives, and as such we will continue to pay LHA direct to them
- ❖ Each case will be dealt with on its’ own merit. Following are some indicators of vulnerability – the list is not exclusive or exhaustive;
 - medical condition – this could include a mental impairment, such as dementia, or a physical condition that may affect mobility and would adversely affect the ability to pay rent if unable to hold a bank account
 - learning difficulties, illiteracy or language barriers – whilst someone with severe learning difficulties will often have an appointee, those whose difficulties that are not quite as severe, those who cannot read and/or write or those who have an inability to speak English, may have a greater difficulty paying their rent
 - drug, alcohol or gambling addictions – whilst not all with an addiction are unable to pay their rent, it can be an indicator to other issues that may result in arrears of rent or non payment of rent
 - debt problems – these would have to be severe and evidence shown as to why this would affect their ability to pay the rent if LHA were paid to the tenant
 - unable to open a bank account – may indicate other debt issues that could present a problem if tenant receives payment
 - people being supported by the Deposit Guarantee Scheme, such as young care leavers/single homeless adults and families

- prison leavers being supported by an appropriate agency/organisation
 - people who have temporary change in their life, such as a relationship breakdown or bereavement which may mean that they need support on a short term basis
 - people fleeing domestic violence and have the support of either the police or a statutory or voluntary agency
- ❖ Receiving representation. In most cases the Council would require evidence in writing – although the initial contact may well come from a telephone call or in person. These representations can come from (this list is not exclusive or exhaustive);
- tenant or landlord
 - friends or family of the tenant
 - other Council services
 - welfare rights group, debt advisors, charities
 - Social services, GP's, health care professionals
 - Job Centre Plus, Pension Service
 - Citizens Advice Bureau
- ❖ Making representation of vulnerability – please see Section 4
- ❖ In cases where a decision is made to pay the LHA direct to the landlord, we will;
- where appropriate, signpost the tenant to a body/organisation that can provide assistance to resolve the issue causing payment to go direct to the landlord
 - where appropriate, provide literature from other organisations to advertise help the tenant might be able to receive
 - seek to maximise a tenant's income where it is identified that they might be entitled to other state benefits
 - review cases at appropriate intervals to check if payment can be made direct to claimant. 'Appropriate intervals' may be short term – a couple of months for cases where debt issues are being resolved, or longer term if the debt problem is more severe. Some cases may not be reviewed at all where the circumstances are not likely to change, such as severe mental impairment

Section 3

Tenant is likely not to pay their rent

- ❖ The Council will assume, unless evidence is received to suggest otherwise, that all tenants receiving Local Housing Allowance will pay their rent
- ❖ This is separate to Section 1, where written in to the legal framework is a requirement to pay the landlord direct once evidence is received that a tenant is 8 weeks or more in arrears
- ❖ Housing Benefit Regulation 96(3A)(b)(ii) allows the payment of the benefit to the landlord in circumstances where 'the relevant authority considers that it is improbable that the claimant will pay his rent'
- ❖ The power conferred by this part of the Regulations is discretionary. We will use this Regulation in line with the Government's intention that welfare reforms are in part to allow tenants to take more responsibility for their own affairs. We will not use this regulation where there is only a possibility of non payment or when the tenant would just prefer not to take responsibility. There has to be evidence that the tenant does not manage their money in a manner sufficient to allow payment, or that the tenant will not pay
- ❖ Each case will be dealt with on its own merit. Following are some indicators of a likelihood of not paying rent – the list is not exclusive or exhaustive;
 - previous non-payment history with the same landlord – such as evidence of arrears in the past
 - poor credit history – such as evidence of arrears with Council Tax or utility charges, evidence of regular unpaid standing order/direct debit payments
- ❖ Receiving representation. In most cases the Council would require evidence in writing – although the initial contact may well come from a telephone call or in person. These representations can come from (this list is not exclusive or exhaustive);
 - tenant or landlord
 - friends or family of the tenant
 - other Council services
 - welfare rights group, debt advisors, charities
 - Social services, GP's, health care professionals
 - Job Centre Plus, Pension Service
 - Citizens Advice Bureau
- ❖ Making representation regarding the improbability of paying rent – see Section 5

- ❖ In cases where a decision is made to pay the LHA direct to the landlord, we will;
 - where appropriate, signpost the tenant to a body/organisation that can provide assistance to resolve the issue causing payment to go direct to the landlord
 - where appropriate, provide literature from other organisations to advertise help the tenant might be able to receive
 - seek to maximise the tenants income where it is identified that they might be entitled to other state benefits
 - review cases at appropriate intervals to check if payment can be made direct to claimant.

This document can be made available in large print, Braille, tape format or in other languages upon request.

Section 4

Making representations regarding vulnerability

- ❖ As stated, in most cases the Council would require evidence in writing

- ❖ Many new claims for LHA will be made at the tenant's home directly to a Visiting Officer from the Council. In these visits we will seek to identify potential cases of vulnerability

- ❖ The Council is also likely to be made aware of other cases by representation from
 - **tenant** – evidence of vulnerability can be provided direct or via other support agencies
 - **landlord/landlords representative** – evidence would be required in writing and further investigations by the Council made. Remember, data protection would not allow us to discuss a tenant's details with a third party without prior authorisation. The tenant would also have access to any representation made to us by a third party
 - **friends/family of tenant** – evidence would be required in writing and further investigations by the Council made. Remember, data protection would not allow us to discuss the tenant's details with you without prior authorisation. The tenant would also have access to any representation you have made to us
 - **Social services, GP's, health care professionals** – evidence would normally be in writing and if recent and specific enough to the likelihood of non payment of rent through vulnerability, would be sufficient. If however not specific, would be used in conjunction with any other evidence provided
 - **Job Centre Plus, Pension Service** - evidence would normally be in writing and if recent and specific enough to the likelihood of non payment of rent through vulnerability, would be sufficient. If however not specific, would be used in conjunction with any other evidence provided
 - **Citizens Advice Bureaux/Other advice agencies** - evidence would normally be in writing and if recent and specific enough to the likelihood of non payment of rent through vulnerability, would be sufficient. If however not specific, would be used in conjunction with any other evidence provided

Section 5

Making representations regarding improbability of payment

- ❖ As previously mentioned, the Council would require representation in writing with as much evidence as possible

- ❖ It is accepted that an improbability of payment will be very hard to evidence, as by definition non payment has not yet occurred. It will be down to the representation to clearly give the reasons why non payment is probable

- ❖ In all likelihood, when advised of a case of this, where there is no real evidence to support the representation, payment will still be made to the tenant. Depending on what the tenant does with that payment will provide evidence to back up/refute the representation

- ❖ Representation may be made by;
 - **tenant** – not often will the representation be made by a tenant and any tenant who declares an intention not to pay would have to provide written evidence to support that, rather than it be seen as an ‘easy way out’ for them to avoid responsibility for making the payments
 - **landlord/landlord’s representative** – evidence would be required in writing and should include evidence of previous non payment if that is the case. Further investigations by the Council would be made to check that there were no lawful reasons why the tenant withheld rent – such as landlord failing to carry out repairs. Remember, data protection would not allow us to discuss a tenant’s details with a third party without prior authorisation. The tenant would also have access to any representation made to us by the third party
 - **Job Centre Plus, Pension Service** - evidence would normally be in writing and if recent and specific enough to the likelihood of non payment of rent, would be sufficient. If however not specific, it would be used in conjunction with any other evidence provided
 - **Citizens Advice Bureaux/Other advice agencies** - evidence would normally be in writing and if recent and specific enough to likelihood of non payment, would be sufficient. If however not specific, it would be used in conjunction with any other evidence provided

Section 6

What happens next

- ❖ Data protection may prevent us from providing you with information if it is not your claim for LHA. However, we will;
 - deal with all information provided to us
 - discuss issues with a specific third party only if we have signed notification giving us permission to, from the tenant making the claim
 - where required, provide the tenant with information you have provided to us about them

- ❖ Once we have received representation of eight week arrears (Section 1) we will,
 - suspend payment to the tenants whilst investigations are made
 - reach a decision within 10 days of satisfactory evidence being received, notify all relevant parties and clearly state any appeal rights that they have
 - review that decision periodically to see if the arrears have fallen below 8 weeks when payment must go back to the tenant

- ❖ Once we have received representation of vulnerability (Section 2) we will,
 - reach a decision within 10 days of satisfactory evidence being received
 - notify all relevant parties of that decision along with any appeal rights they have
 - where satisfactory evidence has not yet been received, we may consider paying the landlord by cheque, although this cheque will be sent to the tenant
 - monitor the action the tenant takes with this cheque or any request for further information, as this may be an indicator of potential vulnerability in dealing with their own affairs
 - review that decision periodically, where appropriate, to see if the issues causing the vulnerability have been eased sufficiently for payment to be made direct to the tenant

- ❖ Once we have received representation of improbability of paying rent (Section 3) we will,
 - reach a decision within 10 days of satisfactory evidence being received
 - notify all relevant parties of that decision along with any appeal rights they have
 - where satisfactory evidence has not yet been received, we may consider paying the landlord by cheque, although this cheque will be sent to the tenant
 - monitor the action the tenant takes with this cheque or any request for further information as this may be an indicator of improbability in paying rent as not prepared to deal with their own affairs
 - review that decision periodically, to establish if circumstances have changed and payment should be made direct to the tenant

Section 7

Data protection

❖ How we collect and use information

- any information provided will be held by South Hams District Council
- it will be used to assist the administration of Housing Benefit and held securely at all times
- information may be shared with other Council Departments and other organisations, such as Local Authorities, Her Majesty's Revenue & Customs, Audit Commission, Child Support Agency and others as required/permitted by law
- this information may be checked against other records that the Council holds
- the tenant is entitled to see information held about them, this would include any representation made by a third party, such as a landlord