



# Local Housing Allowance

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# Payment of Local Housing Allowance

## Safeguard Arrangements

### Introduction

On Monday 7 April 2008 the new Local Housing Allowance was introduced throughout Britain.

Local Housing Allowance is a key component of the Government's Welfare Reforms and represents a major change to the Housing Benefit scheme for tenants of private landlords.

Local Housing Allowance will affect how Housing Benefit is calculated and how it is paid.

There are two main changes to the Housing Benefit scheme under the new Local Housing Allowance.

Firstly the way the maximum rent is calculated changes.

The Rent Officer, an official from the Rent Registration Service, an agency of the Scottish Government, will continue to set the maximum amount of rent which is eligible for housing benefit.

However, the Rent Officer will no longer look at every individual property and the actual rent that is charged by the landlord in each case.

Instead the Rent Officer will set a Local Housing Allowance rate for each size of property in a Broad Rental Market Area (one bedroom; two-bedroom, three bedroom etc.) and these will be published every month on the council's website.

This change is designed to support the Government stated aims of encouraging fairness, choice, and transparency.

Secondly the way Housing Benefit is paid changes under the Local Housing Allowance.

The Local Housing Allowance regulation removes the provision for tenants to choose to have their benefit paid direct to their landlord. In almost all cases payment of Housing Benefit will be made to the tenant directly into their bank accounts.

The tenant will have the responsibility to pay their rent to the landlord.

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This change is designed to support the objectives of the welfare reforms, which aim to encourage personal responsibility and promote financial inclusion.

Empowering people to budget for and pay their rent themselves, rather than councils paying it over their heads direct to the landlord, will also help unemployed tenants to develop the skills they will need as they move into work.

By encouraging and assisting tenants to open bank accounts, receive payments of Local Housing Allowance into those accounts (as most salaries are paid), and set up standing orders to pay their rent, Local Housing Allowance claimants will be more like in-work tenants.

## **Safeguards**

Although, in the large majority of cases, Local Housing Allowance will be paid directly to the tenant, it is recognised in the legislation that some tenants may have difficulties with this responsibility.

In a minority of cases it will be appropriate to make payments direct to the landlord.

Safeguards have been put in place to ensure that this happens.

The aim of the safeguard arrangements is to act in the best interests of our customers and in particular to:

- Prevent rent arrears from building up
- Prevent the risk of a tenancy being put in jeopardy due to non-payment of rent
- Work with tenants and landlords to avoid the risk of eviction
- Assist tenants to open bank accounts and manage their financial affairs where possible
- In partnership with colleagues from the council's Advice Shop and Supporting People Team, offer support for tenants unable to manage their financial affairs
- Provide reassurance to local landlords that their legitimate interests will be taken into account
- Make payments of Local Housing Allowance direct to landlords in appropriate cases in accordance with the provisions of The Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007.

## The Safeguard Arrangements

The four main sets of circumstances covered by the Safeguard Arrangements are:

1. Where a tenant is 8 weeks in arrears with their rent.
2. Where a tenant is unlikely to pay their rent
3. Where a tenant is likely to have difficulty in managing their affairs
4. Where the council considers that it will assist the tenant in securing or retaining a tenancy

### 1. Where a tenant is 8 weeks in arrears:

Regulations provide for the council to pay the landlord direct where the tenant is eight weeks or more in arrears with their rent.

This provision already existed before the Local Housing Allowance and it continues to exist.

Whether the tenant falls under this provision is a matter of fact. These facts will need to be established. The council will need to see proof of these arrears.

The council cannot meet the arrears that have built up during this period, as the tenant will already have been paid this money. Recovery of those arrears is a matter between the landlord and the tenant.

Landlords will be encouraged not to wait for the eight-week period to elapse before contacting the council. Where the council has been informed that a tenant is in arrears the Housing Benefit Team will consider interviewing, or otherwise contact, the tenant to discuss non-payment of rent. After such intervention the benefit team may consider making direct payments to the landlord immediately or may refer the tenant to money advice services for assistance before the arrears reach the eight-week point.

Through leaflets, direct mail shots, and discussion forums, the council will promote awareness of this provision and will encourage local private landlords to keep proper records of their tenants' rent accounts and to discuss matters relating to arrears with the Housing Benefit Team prior to taking any action regarding eviction.

*N.B. Even where eight weeks or more arrears are owed, direct payments are not mandatory if it is not in the tenant's overriding interests to make them or if the landlord is not a "fit and proper person" (see below).*

## **2. Where a tenant is unlikely to pay their rent:**

The council may make the decision to pay the landlord direct where, after evaluating all of the evidence, it considers that the tenant is unlikely to pay their rent and that it is in the interests of the tenant to pay the landlord direct.

Broadly, three questions will be considered under this provision.

- Is the customer unlikely to pay their rent?
- Is it in the interests of the customer to make direct payments to the land lord?
- Would the customer be likely to pay their rent themselves with appropriate help and support?

### **Is the customer unlikely to pay their rent?**

We will need evidence to back this up. Such evidence might include where the customer has previous history of rent arrears, or has severe debt problems, or is unable to obtain a bank account.

One indication that a tenant may fall within this provision of the Regulations is where the tenant has already started to build up rent arrears. As stated above, where this is the case we would encourage local landlords to contact the council as soon as possible in order that the situation can be addressed.

In many cases the council will identify potential cases of people who are unlikely to pay their rent through representations made by one or several of the following:

- The claimant
- The claimant's
  - a. Landlord
  - b. Family and friends
  - c. Homelessness or housing advice officer
  - d. Social worker
- Welfare rights advisors
- Supporting People team
- CAB advisor
- Voluntary worker

### **Is it in the interests of the customer to make direct payments to the landlord?**

In most cases it is in the long term interests of the customer to manage their own affairs and make their own payments of rent, however certain individuals may simply not be able to do this reliably, so the council will examine this question carefully.

### **Would the customer be likely to pay their rent themselves with appropriate help and support?**

Many customers, who might otherwise be unlikely to pay, may be able to do so if given some help and support. In such cases we will consider referring the customer to the council's Advice Shop or the Money Advice team or to other agencies such as the Citizen's Advice Bureau.

### **3. Where a tenant is likely to have difficulty in managing their affairs:**

Regulations provide for the council to make payments direct to the landlord in cases where it, "... considers that the claimant is likely to have difficulty in relation to the management of his financial affairs"

However, statute does not define the conditions that must be satisfied in order for a local authority to apply the safeguards in this section. However, the overriding consideration is to act in a way that is in the best interests of the claimant.

In applying this provision, the council will consider each case on its merits, taking into account all relevant factors and disregarding irrelevant matters. A blanket approach will not be adopted - either in general or in respect of particular client groups.

Where we are advised that a customer is likely to have difficulty managing his or her own affairs, we need to know the reason for this and to seek evidence, usually in writing, to support this claim.

Depending on the reasons given, this evidence may be sought primarily from professional support workers or health care professionals, but others can, with the customer's consent, make representations to the council.

Guidance from the Department for Work and Pensions suggests that there may be certain characteristics that may indicate that a customer is likely to have difficulty in managing their financial affairs and in paying their rent (see examples below).

However such indicators will be used only to flag up a potential area of concern, and as a starting point in evaluating the situation in individual cases.

There are no indicators that will determine definitively that a person will have difficulty in managing their affairs. The council will not decide that a claimant has satisfied the safeguard criteria simply because they match one or more of the indicators. For example, a person recovering from a gambling addiction may have difficulty in managing their financial affairs but learning to do so, on their own or with support, may be an important part of their rehabilitation process.

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Characteristics, which may be possible indicators that a claimant may have difficulty in managing their affairs, might include:

- People with learning difficulties
- People with certain medical conditions that may seriously impair their ability to manage on a day to day basis
- People with certain mental health problems
- People with addictions to drugs, alcohol, or gambling
- People fleeing domestic violence
- People leaving care or homelessness

The above list is not exhaustive.

In most cases the council will consider representations and supporting evidence from a number of sources including:

- The claimant or their representatives
  - The claimant's
    - a) Landlord
    - b) Family and friends
    - c) GP
    - d) Social worker
    - e) Probation officer
  - Supporting People team
  - CAB advisor
  - Voluntary worker
  - Charities and support groups

#### **4. Where the council considers that it will assist the claimant in securing or retaining a tenancy.**

The council may make the decision to pay the landlord direct where, after evaluating all of the evidence; it considers that direct payment will assist the customer in securing or retaining a tenancy. In order for a tenancy to be considered as secured or retained the rent should be affordable to the tenant.

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In order to establish what can be considered an affordable rent, the rent should be at a level which is affordable to the tenant. In the majority of cases this will be the Local Housing Allowance rate which applies to the customer. However, some tenants may have the resources to pay slightly more; each case will be decided on its merits.

In most cases the council will consider representations and supporting evidence from a number of sources including:

- a. Landlord
- b. Homeless prevention team
- c. Welfare advice organisation
- d. Money Advisors.

## **Making, notifying, and reviewing the decision**

The Housing Benefit Team will seek to gather all appropriate evidence in order to arrive at a decision that takes into account all relevant factors and is in the best interests of the claimant.

Payment of Housing Benefit need not necessarily be delayed in every case whilst awaiting the outcome of the decision. We may consider making initial payments to the claimant whilst gathering and evaluating any available information and evidence. Indeed, how the claimant deals with such initial payments may help to inform the decision.

Alternatively, regulations provide for us to make initial payments to the landlord, up to a maximum of eight weeks, pending a decision being made

Where the decision is that payment of Local Housing Allowance should be made direct to the landlord, consideration will be given to how long such an arrangement should be in force.

- In cases where the tenant is eight weeks or more in arrears, payment direct to the landlord will normally end when these arrears have been cleared.
- However, at the end of this period, consideration may be given to the question of whether the claimant remains “unlikely to pay their rent” and it is possible that a fresh decision to pay the landlord direct may be made under those provisions.
- In cases where the decision to pay the landlord direct has been made because the tenant was unlikely to pay their rent, or because the tenant was likely to have difficulty in managing their affairs, consideration will be given to whether this is
- Likely to be a short-term or a long-term difficulty and an appropriate review date will be set when the decision will be looked at again.

Where the decision is that payment of Local Housing Allowance should be made direct to the landlord we will write to the tenant and/or their representative advising them of the decision, the reason for the decision, their appeal rights, and when the decision is to be reviewed.

We will also write to the landlord advising that the tenant's Local Housing Allowance entitlement, not exceeding the contractual rent or the contractual rent plus arrears, will be paid direct to them on behalf of the tenant. We will also inform the landlord of the date the decision is to be reviewed.

Where the decision is that payment of Local Housing Allowance should be made to the tenant we will write to the tenant and/or their representative advising them of the decision, the reason for the decision, and their appeal rights.

We will also offer to refer the tenant to our Money Advice colleagues and other advice services who can assist them in opening a bank account and in dealing with their finances.

Where a landlord had requested direct payments we will write to them advising of the decision to pay the tenant, the reason for that decision, and the landlord's appeal rights as a person affected by the decision.

### **Payments to Landlords: the “fit and proper person” test**

Local Authorities are not obliged to make direct payments to landlords where they are not satisfied that the landlord is a ‘fit and proper person to be the recipient of a payment of rent allowance’.

This overriding provision applies even where all the criteria for a direct payment would otherwise have been met.

The council will apply the ‘fit and proper person’ test where the landlord's honesty or financial propriety is in doubt.

Each case will be looked at on its merits according to the individual facts of the case. Whilst additional weight will be given to impropriety or dishonesty relating to Housing Benefit and other social security matters, other instances of serious dishonesty or criminality may be taken into account.

In general terms, we will have to consider whether or not a landlord is a “fit and proper person” to receive housing benefit cheques where their past actions have raised some doubt about them.

#### **For example:**

If a landlord had colluded with a tenant in misrepresenting facts about a tenancy or the occupation of the dwelling in order to obtain Housing Benefit, this may lead the council to conclude that such a landlord was not a “fit and proper person”

A landlord who failed to report a change in their tenant's circumstances, which they could reasonably have been expected to know about, might also fail the ‘fit and proper’ test. A landlord with a history of not repaying overpayments of Housing Benefit might also fail this test.

## **Referrals to advice agencies**

The council recognises that direct payments to the landlord are not the only way in which practical assistance may be provided to tenants who are thought to be vulnerable. Advice agencies can provide practical help, advice, and support for claimants that may assist them in paying their rent.

Regardless of the outcome of a decision to pay, or not to pay, the landlord direct, the Benefit Team will offer to refer claimants to the council's Advice Shop, or to appropriate outside agencies, for money advice and other help in managing their financial affairs where appropriate.

Thus, where it has been decided not to pay the landlord direct but to pay the claimant, the claimant may still gain from the provision of money advice or assistance in opening a bank account.

Alternatively, where direct payments to the landlord are seen as the best decision, provision of advice and support might help the claimant towards eventually managing their own financial affairs.

## **Monitoring and evaluating the safeguard arrangements**

The operation of these safeguard arrangements will be constantly monitored and evaluated to ensure consistency and fairness of decision making and to identify any areas of improvement.

A performance review will take place at least twice a year, in consultation with partners in other agencies, to revise and refine procedures and to identify and close any gaps in provision. In light of experience, any necessary revisions to evidence-gathering forms, publicity material, and guidance notes will be made in consultation with our partners.

It is recognised that the council's Advice Shop, Supporting People Team and other council services, especially front-line staff, have a major role to play in assisting our mutual customers. Other partners, including local landlords, voluntary organisations, the Citizens Advice Bureau, the Pension Service, and others, also have an important part to play.

Such partners not only have a vital role in the day-to-day work of identifying and referring to the council's Benefit Team those claimants who may have real difficulties, but their collective expertise in this field will greatly assist in the continuous development and improvement of the safeguard arrangements in West Lothian. We will continue to build on our existing strong partnerships and close working relationships.