

LOCAL HOUSING ALLOWANCE SAFEGUARD POLICY

INTRODUCTION

The purpose of this document is to provide the general policy intention in the way South Oxfordshire District Council and Vale of White Horse District Council define those claimants who are considered to be likely to have difficulty in relation to the management of his financial affairs, or it is improbable the claimant will pay his rent. These definitions are introduced into the Housing Benefit regulations 95 and 96 from 7 April 2008, as introduced by SI 2868 2007. Reference to regulations refer to the Housing Benefit Regulations 2006, but equally apply to the equivalent provisions in the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

DEFINITIONS

HB	-	Housing Benefit
LHA	-	Local Housing Allowance

BACKGROUND

From 7 April 2008, in most instances local authorities are no longer able to pay the landlord HB for tenants renting in the private sector, even if the tenant requests this. The Government's aims in introducing direct payments to tenants are:

- To empower tenants to take responsibility for paying their rent themselves.
- To encourage working age customers to develop skills to assist with a move into employment.
- For all people on HB to manage their financial affairs themselves.
- To bring HB into line with other benefits and tax credits, which are paid to customers direct.

There are a few private sector tenancies which are excluded from the LHA process. These are:

- Supported accommodation provided by charities or voluntary organisations.
- Tenancies which commenced before 15 January 1989.

- Tenancies for caravans, houseboats, mobile homes and hostels.
- Tenancies with substantial board and attendance.

However, the Government does recognise that certain tenants may be incapable of dealing with their financial affairs, or are unlikely to pay their rent. In these circumstances, the councils may consider making payment direct to the landlord if it is in the customer's best interest.

The purpose of this policy is to set out how the councils intend to support the Government's aims for LHA in the administration of a safeguard scheme for tenants, while at the same time taking into account the aims and objectives of the councils. This policy aims to:

- To provide a safeguard for the most vulnerable tenants and reassure them that their benefit entitlement will be paid.
- Help prevent rent arrears and tenants being put at risk of eviction.
- To reassure landlords that the benefit will be paid to them where tenants are considered incapable of managing their financial affairs, or it is improbable they will pay their rent.
- Help put tenants in touch with other agencies where appropriate and give tenants the opportunity and support to manage their own tenancies and finances.
- To ensure that fair, reasonable and consistent decisions are made on payment direct to landlords.
- To treat each case individually and to avoid making assumptions about people's situations.
- Promote a transparent and simple process which is widely understood.

It should also be remembered that the mandatory payment to landlords contained in regulation 95 of the HB regulations are still in force. This means the councils will still have to pay the landlord if the tenant is eight weeks or more in arrears, or where an amount of Income Support or Job Seeker's Allowance is being paid direct to the landlord.

STRATEGIC OBJECTIVES AND AIMS OF THE COUNCILS

South Oxfordshire District Council has set seven Strategic Objectives. Three of these objectives which are relevant to this policy are:

- Strategic Objective 4 - To meet people's housing needs.

- Strategic Objective 5 - To improve health and well-being.
- Strategic Objective 6 - Maintain and improve the economy

The Vale of White horse District Council has a set of six aims. Three of these aims which are relevant to this policy are:

1. Create a safer community and improve the quality of life of residents.
2. Encourage a strong and sustainable economy which benefits all who live in the area
3. Help disadvantaged groups and individuals in the Vale to realise their full potential.

In order to meet these aims and objectives, the benefits service has a set of criteria to ensure a balance between allowing tenants to gain the skills and confidence to manage their own affairs to allow them to expand their horizons and gain employment, while safeguarding those tenants who need help with managing their financial affairs or are unable, or probably will not, pay their rent.

TENANTS UNABLE TO DEAL WITH THEIR FINANCIAL AFFAIRS

The first provision allowing payment direct to a landlord is if the tenant is likely to have difficulty in relation to the management of his financial affairs. The word likely in this context means there must be a degree of certainty that the tenant will be unable to manage their financial affairs. This does not include situations where:

- There is a possibility the tenant may have difficulty managing their affairs.
- There is a risk that in certain circumstances the tenant may be unable to manage their affairs.
- The tenant chooses to manage their finances in a less than organised way.

The decision will be made by evaluating all the evidence gathered. Ideally, the evidence should be in writing, but other evidence such as interviews with visiting officers or verbal evidence should also be considered. Information already held by the councils should also be taken into account.

Possible indicators that a tenant may have difficulties in managing his financial affairs will include:

- **Learning difficulties** – these may range from mild to severe. Evidence to the severity of the disability may come from care workers, doctors, social services, supporting people teams. People with severe learning difficulties will normally have an appointee.
- **Physical or mental medical conditions** – which is likely to seriously impair a tenant's ability to manage their financial affairs. Mental conditions will include illnesses such as schizophrenia, depression, Alzheimer's disease or senile dementia. Physical conditions will include severe mobility problems or sensory impairment. The councils will consider how the tenant's other financial affairs are conducted e.g. if they are supported in their financial dealings. Evidence of medical conditions may come from doctors, care workers, social services, supporting people teams.
- **Literacy problems and inability to speak English** – illiteracy includes reading and writing and financial illiteracy. All these problems may become apparent from the way the tenant made his claim. The councils will consider how the tenant's other financial affairs are conducted e.g. if they receive support for their financial affairs. An inability to speak English on its own will rarely be a reason that a tenant is likely to have difficulty managing their financial affairs. Evidence for these problems may come from welfare organisations and ethnic minority link groups.
- **Addiction to drugs, alcohol or gambling** – tenants who suffer from these addictions may have problems managing their financial affairs. Evidence for these problems may be obtained from doctors, care workers, Social Services, support organisations for people with addictions and probation services.
- **Severe debt problems** – the councils should consider whether any debt problems have affected the tenant's ability to pay his rent. The councils should also look at how any debts are being managed or supported to see if the tenant is able to manage their financial affairs. Evidence of problems with debts may come from banks, debt advisors, creditors, courts, solicitors and welfare organisations.
- **Fleeing domestic violence, leaving care or prison** – tenants in this position may have problems managing their financial affairs, at least initially, due to stress or lack of knowledge. Evidence for tenants in these situations may be obtained from Social Services, probation officers, women's' refuges, support organisations and supporting people teams.
- **Unable to open a bank account** – it will be unusual for someone not to be able to open a bank account. Some basic bank accounts will even accept bankrupts. Where the tenant is adamant they are not able to open a bank account evidence of this may be obtained from banks or money advisors.

This list is not exhaustive. Any relevant evidence should be considered. It may be that the tenant is unable to provide evidence to support his application to have his rent paid to his landlord. This could be evidence in itself of his inability to manage his financial affairs. If a tenant refuses to co-operate, the councils will make the decision on whatever evidence is to hand.

Tenants who have appointees should not be considered as requiring safeguarding, as it is the appointee who looks after their financial affairs.

IT IS IMPROBABLE THE TENANT WILL PAY HIS RENT

The second provision allowing payment direct to a landlord is if it is improbable the tenant will pay his rent. In this context, the word improbable means there is an odds on chance that the tenant will not pay his rent. The intention of this provision is to protect tenants who are likely to act irresponsibly from falling into rent arrears.

The councils should distinguish between tenants who may say they are unlikely to pay their rent in order to have the payment of their HB paid to their landlord and those tenants who are in reality unlikely to pay their rent.

Possible indicators that it is improbable a tenant will pay his rent include:

- **A history of non payment of rent** – this could indicate a tenant may not place great importance on paying their rent. This could be in their current or a previous tenancy. However, a past history of non-payment of rent does not automatically mean the tenant will not pay his rent now.
- **Other debts and arrears** – this may be particularly useful indicators for tenants who have always had their rent paid to their landlord, or are renting for the first time. Where a tenant has other debts, but has always paid his rent, this will not demonstrate the tenant will not pay their rent. County Court judgements in themselves will not demonstrate an improbability to pay, without knowing the reason why the judgement was obtained. Greater emphasis will be placed on the non-payment of priority debts, as this indicates an unwillingness or inability to pay for the essentials of daily living.

Priority debts are:

- Rent
- Mortgage
- Council tax
- Water rates
- Gas and electricity

Non priority debts include:

- Unsecured loans
- Credit and store cards
- Catalogues and club memberships
- Telephone and mobile phone charges

The councils should also take into account any records they hold of debts owed to them.

- **Age and experience of the tenant** – although a tenant may be very young or inexperienced, this in itself will not demonstrate an improbability to pay the rent, it will be a factor taken into account alongside any other evidence available.

This list is not exhaustive. All decisions will be made on the evidence available. If the tenant refuses to provide any evidence, the payment shall be made to the tenant.

Evidence received from a landlord will be evaluated taking into account that a landlord may have a financial interest in having the rent paid to him. Where evidence is received from a landlord only, it will be desirable to have other supporting evidence.

REPRESENTATIONS

The request to have payment of HB made direct to the landlord will usually be made in writing. Where a visiting officer meets a tenant, the visiting officer may record a request for direct payment and any evidence seen.

Requests should detail the reasons why a direct payment should be made. Where there is no evidence, the councils will request further evidence. Regulation 96 allows the councils to pay a landlord direct for up to eight weeks while they are considering any request to pay the landlord.

Requests for payment direct to a landlord will be accepted from:

- The tenant.
- Friends and family of the tenant.
- The landlord.
- Citizen Advice Bureaux, Welfare Rights and other support groups, voluntary and charitable organisations.

- Statutory organisations e.g. Social Services, Probation Service, etc.
- Doctors and GPs.

Data protection: The councils will ensure they have the claimant's consent to approach individuals or organisations, unless there is an established legislative gateway permitting the information to be disclosed to them.

All persons affected by the decision should be notified in writing of the decision, which will include their statutory appeal rights.

REVIEWS

By reviews, the councils mean:

- The statutory appeal rights provided by the Housing Benefit and Council Tax Benefit (Decision and Appeals) Regulations 2001. These provide rights of appeal to the Tribunals Service for tenants and in certain circumstances landlords.
- Non-statutory periodical reviews of payments direct to landlords to ensure the decision to pay the landlord remains valid and appropriate.

Any appeal to the Tribunals Service will be dealt with in the normal way. For the periodic reviews, the councils will decide if a tenant will need a review every six months, 12 months or no review at all. Suggested review periods are:

- **6 Months** – this period would normally be set for tenants who are fleeing domestic violence, recovering from addiction, requiring debt advice or, are on a waiting list for a housing related support provider.
- **12 Months** – this would be an appropriate period for tenants where it is improbable they will pay their rent or where there is a long-term medical problem which makes it likely that they are unable to deal with their financial affairs.
- **No review** – this will apply to tenants whose medical condition is such that they are unable to deal with their financial affairs and there is little or no chance the condition will improve.

These periods are only suggestions and each tenant's circumstances must be looked at in the whole when setting review periods. Where the landlord is being paid, he will continue to be paid during the review process until a final decision is made.

REFERRALS TO OTHER AGENCIES

Although making a decision on improbability that a tenant will pay their rent is different to vulnerability, the councils will still consider whether it is appropriate to refer or signpost the tenant to specialist advice and support.

Where a tenant has:

- severe debt problems, or
- a need for monetary advice or housing related support.

The councils will refer the tenant (or encourage them to seek advice and guidance) to a relevant organisation who will be able to assist them. These could include:

- Citizens Advice Bureaux and other welfare rights groups.
- The councils housing departments
- Debt advice agencies
- Supporting People teams
- Tenancy Support organisations
- Community Legal Services
- Other voluntary sector groups

The councils will work in partnership with these agencies to ensure the tenant receives the relevant advice and support and that their inability to pay their rent is for as short a period as possible.

The councils will also provide information on basic bank accounts and how to open them. This information will be available from such sources as leaflets provided by the Financial Services Authority.

REFERENCE DOCUMENTS

1. The Housing Benefit Regulations 2006 (SI 2006/213) as amended by the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (SI 2007/2868).
2. The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (SI 2006/214) as amended by the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Regulations 2007 (SI 2007/2869).

APPENDICES

1. Tenant likely to have difficulty in relation to the management of his financial affairs criteria and possible sources of evidence.
2. Tenant where it is improbable he will pay his rent criteria and possible sources of evidence.

Difficulty in relation to the management of his financial affairs and possible sources of evidence

Criteria	Possible sources of evidence
Learning Disability	<ul style="list-style-type: none"> • Doctor • Social Services • Care Workers • DWP
Medical Condition	<ul style="list-style-type: none"> • Doctor • Social Services • Care Workers • Hospital • Department for Work and Pensions • Support Organisations
Addiction problems e.g. Drugs, Gambling, Alcohol	<ul style="list-style-type: none"> • Doctor • Social Services • Hospital • Police • Care Workers • Support Organisations
Fleeing Domestic Violence	<ul style="list-style-type: none"> • Doctor • Police • Social Services • Support Organisations • Department for Work and Pensions
Care Leavers	<ul style="list-style-type: none"> • Doctor • Social Services • Homeless Team • Support Organisations / Homeless charities
Prison Leavers	<ul style="list-style-type: none"> • Social Services • Probation Service • Support Organisations
Severe Debt Problems	<ul style="list-style-type: none"> • Courts • Banks / Building Societies • Solicitors • Creditors • Support Organisations e.g. CAB, Age Concern
Undischarged Bankruptcy	<ul style="list-style-type: none"> • Court Order documents
Inability to open a Bank Account	<ul style="list-style-type: none"> • Evidence from banks / building societies • Money Management / Welfare and Information Centres

Appendix 1

Where DWP is making deduction from benefits and paying direct to utility company	<ul style="list-style-type: none">• Department for Work and Pensions• Job Centre Plus
Tenant is in receipt of Supporting People funding	<ul style="list-style-type: none">• Support Organisation• GP• Social Services• Supporting People Team
Rent Deposit Scheme tenants	<ul style="list-style-type: none">• The councils' housing departments• Landlords• CABx• Social Services• Department for Work and Pensions

Improbable the tenant will pay his rent criteria and possible sources of evidence

Criteria	Possible sources of evidence
History of non-payment of rent	<ul style="list-style-type: none"> • Landlord (past and present) • NOSPs, eviction notices and other court orders • Housing Department • Social Services • Supporting People teams • Money advisors
Other debts and arrears	<ul style="list-style-type: none"> • County Court Judgements • Banks/Building Societies • Solicitors • Creditors • Support organisations e.g. CAB, Age Concern • Social Services
Age and experience	<ul style="list-style-type: none"> • Social Services • Support organisations • Details on the HB claim form • Supporting People teams