



Local Housing Allowance Direct Payment Policy

December 2010

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Introduction

1. The Regulations governing Local Housing Allowance (LHA) make it clear that the principle and expected practice is that the entitlement to LHA will normally be paid direct to the claimant rather than the landlord.
2. One of the key principles of the Welfare Reform Act is that of encouraging personal responsibility, tackling financial exclusion and empowering people to budget for and pay their rent themselves rather than having it paid for them to their landlord.
3. In addition to personal responsibility, claimants are encouraged to choose how to spend their income similar to other tenants not in receipt of benefit including being able to choose whether to spend less on housing and increase their available income.
4. The regulations provide Local Authorities with the discretion to pay rent to landlords where there is **evidence** that the housing benefit claimant would be unlikely to pay their rent or where making direct payments would not be in the interests of that claimant.
5. The circumstances under which claimants should not normally receive the payment direct are identified by the Department of Works and Pensions (DWP) as:
 - A Where a claimant is considered likely to have difficulty in managing their affairs i.e. vulnerable claimants
 - B Where it is improbable that the claimant will pay their rent
 - C Where the claimant has built up rent arrears of **eight** weeks or more
 - D Deductions are being made from DWP administered benefits such as Income Support (IS) or Job Seekers Allowance (JSA) in respect of arrears.

*Unless it is in the overriding interests of the claimant not to do so
(HB Reg 95(1) (a) and (b))*

6. The aim is to minimise the risk of tenants falling into arrears and ensure that they keep a roof over their heads.
7. The Royal Borough of Kingston's Benefit Service will use its discretion to determine if LHA should be paid to the landlord where the claimant is considered vulnerable and where it is likely that the claimant will not pay their rent i.e. A, B and D above. Where the claimant has 8 weeks

or more arrears the existing Housing Benefit regulations apply and provide that direct payment will be made to the Landlord.

8. A number of factors will be considered relevant when using the discretion in deciding whether payment should be made to the landlord instead of direct to the claimant. These are detailed in the following paragraphs.

As a safeguard for the vulnerable

9. The customer may have learning difficulties, a medical condition, educational needs or other vulnerabilities that suggest that they may have difficulty in handling their own financial affairs or they may have existing debt problems.

Triggers identifying possible vulnerability:

- Claimants living in accommodation designed for people such as those with learning difficulties
- Certain medical conditions
- Alcohol or drug dependency
- Homelessness
- Care leavers
- Certain elderly living alone
- If a tenant obtains a private tenancy with assistance from a LA's housing authority (an LA assisted tenancy), this will often be reliable evidence that a person has had difficulties managing their rent in the past and in many cases safeguarding is likely to be appropriate.

10. The above list is not exhaustive and will not be used to automatically decide if a claimant is vulnerable. They will be considered as triggers for further action and consideration will then be given to the effect of the vulnerability. If the effect of the vulnerability results in difficulty in managing financial affairs this then can be evidenced in a number of ways:

- Debt problems
- CCJ's
- Bankruptcy
- Severe rent arrears
- Direct payments for IS/JSA
- Receipt of supporting funds

Again this list is not exhaustive.

11. In the assessment of vulnerability the aims and objectives are:

- Protection of vulnerable customers, providing reassurance that their rent will be paid.
- To help prevent rent arrears and customer's being put at risk of eviction

- To reassure landlords that the appropriate Local Housing Allowance award will be paid to them if they have vulnerable tenants who have problems managing their finances.
 - To help put customers in touch with other agencies / support groups who will be able to offer them the support to manage their own affairs
 - To make fair, responsible and consistent decisions.
 - To promote and publicise a process which is widely understood
 - To treat each case independently and on it's own merits
12. The 'vulnerability' provision cannot be used to circumvent the provision of direct payment to claimants. In most cases the Benefit Office will be looking for evidence from professional bodies such as doctors, social workers, probation offices. In addition the Benefit Office may interview the claimant to support their decision.

Alerting the Benefit Office of potential vulnerability

13. The customer or a customer's representative contacts the Housing Benefit Section to make them aware that they would prefer their LHA to be paid to their Landlord. This request needs to be supported by written evidence from a third party, but initially can be by:
- A letter/e-mail
 - A phone call
 - The application form for Direct payments of Local Housing Allowance
14. The Benefit Office will not delay payment of Housing Benefit where evidence has been requested but has yet to be received. It will consider making payment whilst awaiting evidence, either to the claimant or to the landlord – in accordance with regulations this provision will be for 8 weeks only.

Gathering information and evidence

15. Senior Benefit Officers will consider the information and evidence that has been received and whether there is enough evidence to make an appropriate decision. Evidence will be considered from amongst others:
- Doctor
 - Social Worker
 - The Department of Works and Pensions (DWP)
 - Reputable financial institutions
 - Courts
 - Support or Advisory Services e.g CAB
 - Interview with a Senior Benefit Officer
 - Interview with a Senior Housing Officer

Please note evidence from a landlord alone will not be accepted.

People who are unlikely to pay their rent.

16. Claimants may have demonstrated, through their past behaviour, that it is 'improbable that they will pay their rent'. In such cases the landlord needs to provide evidence to support this claim. For example,

a) If a tenant is known to have a learning disorder or a drug/alcohol problem that would mean that they are likely to have difficulty in managing a budget.(HB Reg 96 (3A)(b) (i))

b) It is improbable that the claimant will pay their rent, e.g if the LA is aware that the tenant has consistently failed to pay the rent on past occasions without good cause (HB Reg 96 (3A)(b) (ii))

c) a direct payment has previously been made under regulation 95 in respect of a current award of HB (HB Reg 96 (3A)(b)(iii))

17. In cases where a landlord may feel that their tenant is not likely to pay the rent, and no other evidence is provided to support this claim the landlord will need to wait until the rent is more than two weeks past the due date.

18. The Eight Week rule.

- Housing Benefit will be paid to the Landlord where the tenant is in arrears by an amount equivalent to eight weeks unless it is in the overriding interest of the tenant not to make direct payment to the landlord. The DWP takes that view that '*a person cannot be in arrears in respect of a period that has not yet been served*'
- Doncaster vCoventry City Council, /First Tier Tribunal (032/09/00932, 5 October 2009). The Chairman expressed the view that '*Rent is in arrears once the contractual date for payment has passed irrespective of whether rent is due in advance or arrears*'
- HB/CTB Circular A26/2009

Alerting the Benefit Office of the probability of rent not being paid

19. Landlords should contact the Benefit Office to make them aware of:

- Claimants who have demonstrated, through their past behaviour, that it is 'improbable that they will pay their rent' or
- where rent is more than two weeks past the due date.

20. Evidence should be provided supporting the request for Benefit to be paid to the Landlord.

21. Evidence will be considered from any of the groups mentioned under the vulnerability provision above. If this is not available evidence needs to be provided by the landlord to prove there are rent arrears.
22. The Benefit Office will consider what action is necessary to take on the benefit claim and this may involve contacting the claimant for an explanation and to explain the importance of paying rent and the consequences on their future benefit payments where they fail to pay on time.
23. For each case that the Benefit Office has decided to pay the landlord the situation will be monitored with a view to changing the payee back to the claimant where the arrears are cleared.

8 Week arrear cases

Alerting the Benefit Office of eight weeks arrears.

24. Landlords should contact the Benefit Office where the tenant is in arrears of rent by an amount equivalent to 8 weeks or more of the amount the tenant is liable to pay.
25. The landlord will need to satisfy the Benefit Office that arrears exist including provision of rent liability and payments.
26. The Benefit Office will consider what action is necessary to take on the benefit claim and this will involve contacting the claimant for an explanation and where necessary inviting them in for interview. This will allow the Officer to explain the importance of paying rent and the consequences on their future benefit payments where they fail to pay on time.
27. If the claimant fails to attend the interview their claim will be temporarily suspended and the case will be referred to the Visiting Officer. He/she will make a mutually convenient appointment with the claimant to discuss the problem. The outcome will be fed back to a Senior Benefit Officer who will then consider the findings and make a decision on who should receive future HB payments. All parties will be informed of the decision.
28. For each case that the Benefit Office has determined to pay the landlord the situation will be monitored with a view to changing the payee back to the claimant where the arrears are cleared.

Summary

29. Given the different circumstances of individual claimants, this policy does not attempt to provide a list of defined circumstances to identify

only and all those claimants who would have difficulty handling a budget or who would be unlikely to pay their rent. The discretion is for the Local Authority. There is a need however that evidence must be provided in respect of each claimant to support a decision to pay the landlord direct.

30. In all cases where the Local Authority has a discretion each case will be decided on its individual merit.

Guidance from the DWP:

31. The guidance stresses that payment should not be delayed pending the outcome of a decision and 'how the claimant handles initial payments may in fact help the Authority reach a decision on vulnerability'.
32. The guidance further stresses the importance of collecting, verifying and considering evidence before reaching a decision that a claimant is 'unlikely to pay their rent'. However, the guidance points out that this test 'is likely to be based on past behaviour to a greater degree than a vulnerability decision'.

Referral to outside advice agencies

33. Direct payments to the landlord are not the only way in which practical help may be provided. Advice agencies can provide practical advice and support for the claimants that may allow them to pay their rent.
34. Claimants may initially have difficulty in paying their rent themselves but may be capable of doing so after having received appropriate help and advice such as understanding their liability to pay rent or opening a bank account.

Making a decision

35. A senior member of the Benefits Office will be involved in the decision making process for each case. This process will involve making a decision based on the evidence/information supplied in support of the request. In all cases one of two decisions will be made:
- The tenant is vulnerable and the payment of LHA **will be** made to the landlord. A review date will then be set for between 3 -12 months to reconsider the situation.

- The tenant is **not** vulnerable and payment of LHA will be made to the tenant.

This decision will be dealt with as a priority and should be made within 10 working days or as soon as is practicably possible thereafter.

Notifying affected parties

36. The customer and / or their representative will be written to and advised of the following:

- The decision and the reasons for it
- If and when the decision will be reviewed.
- Appeal rights against the decision to pay or not pay the landlord as appropriate
- Advice agencies, voluntary or statutory organisations which may be able to offer help
- Contact details for the CAB Money Advice Service if they do not have a bank account and will be receiving excess LHA themselves.

37. The landlord will also be written to and advised:

- If their tenant has been found vulnerable Kingston Council will be paying them, the landlord, LHA up to the contractual rent.
- If and when the decision will be reviewed
- Request bank details if not previously received
- If their tenant has not been found to be vulnerable, the landlord has appeal rights against the decision.

Reviewing decisions on payment to landlord

38. There are four occasions when a decision on who to pay has to be reviewed:

- On appeal from a relevant person (Claimant or Landlord)
- At a set time after the original decision to check the claimants current circumstances and that the original decision is still correct/applicable
- There is a change that would affect the decision
- Where the claimant requests a review

Appeal procedure:

39. When an appeal is received :

1. The original decision along with any other supporting documentation (if provided) will be considered by a different Officer from the one that made the initial decision.
2. All parties affected will be notified of the outcome of that review.
3. If the Council upholds the original decision the appellant will be notified and a submission will be prepared by the Council and passed to the independent Tribunal Service.
4. A copy of the submission will also be sent to the appellant.

For more advice on the Appeals procedure please contact customer services on 020 8547 5001.

Please note: There can be no appeal against the level of Local Housing Allowance (LHA) or Broad Rental Market Area (BRMA).

Contact details:

- Customer Services: 020 8547 5001
Phone lines are open between 8am – 6pm Monday to Friday
- Fax: 020 8547 5648
- E-mail: benefits@rbk.kingston.gov.uk
- Address: Housing and Council Tax Benefits
Guildhall 2
Kingston
Surrey
KT1 1EU
- Information and Advice Centre opening hours: 8.30am – 5pm
Monday to Friday