



Local Housing Allowance Safeguards for Tenants and Landlords

Policy Document

This Safeguards Policy supports the Council's Equality and Diversity policy and has particular regard to the needs of vulnerable residents generally, including ethnic minority residents and those of whom English is not their first language.

Introduction

As part of the Government's programme to reform the Housing Benefit (HB) system, the Local Housing Allowance (LHA) scheme was introduced nationally on 7 April 2008.

Under the LHA scheme claimants receive Housing Benefit based upon:

- The area in which they live
- The number of occupiers in their property

(Entitlement to LHA is still subject to a means-test and proof of a valid tenancy.)

LHA applies to people living in private rented sector accommodation. However, there are some exceptions to the scheme, including:

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

To encourage personal responsibility and financial inclusion LHA is normally paid to the tenant. The provision in HB Regulation 96 which allows tenants to choose to have their benefit paid to the landlord has been removed. However, in recognition that some tenants may struggle with the responsibility of budgeting for, and paying their rent, safeguards have been put in place.

DWP Guidance

The Department for Works and Pensions (DWP) has provided guidance on when it may be appropriate for us to make direct payments to a landlord, where a tenant cannot pay or is unlikely to pay their rent.

The following rules continue to apply to LHA cases as they do to all other rent allowance cases. Payment to a landlord is required if:

- the tenant has built up rent arrears of eight weeks or more except where it is in the overriding interest of the claimant not to make direct payments to the landlord, or;
- the tenant is having deductions made from their Income Support (IS), Jobseeker's Allowance (JSA), Employment and Support Allowance (ESA) or Pension Credit to pay off rent arrears.

HB Reg 95 (1) (a) and (b)

In all other cases we have the discretion to make payments to the landlord if appropriate to do so, which we will consider under our Safeguard Policy.

Wigan Council Safeguard Policy

Our policy is intended to:

- provide a safeguard for tenants who may have difficulty managing their rent payments and reassure them that their benefit and rent will be paid
- prevent rent arrears which may lead to the possibility of eviction
- help to sustain tenancies for vulnerable tenants
- help tenants to take responsibility for receiving direct payments of LHA, and where appropriate put tenants in touch with other agencies to give them the opportunity and support to manage their own financial affairs
- reassure landlords that their rent will be paid if they have vulnerable tenants
- enable us to work with landlords where the tenant consistently fails to pay the rent.
- enable us to make reasonable, fair and consistent decisions
- promote a transparent and simple process that is understood widely
- treat each case individually and not to make assumptions about an individual's situation

Our policy is **not** intended to:

- supersede support that is being received to allow tenants the opportunity to be responsible tenants and be in control of their own income and expenditure
- supersede the services already available in the borough for tenants who require money or debt advice
- be used by landlords to circumvent the aims of LHA
- be a blanket policy for agencies providing support to private tenants

We **will consider** paying the Local Housing Allowance direct to the Landlord if:

- the tenant is **unlikely** to pay their rent because he or she:
 - has less than 8 weeks rent arrears or consistently failed to pay
 - has previously absconded from a property leaving rent arrears
 - has previously had their benefit paid directly to the landlord under Reg 95 in respect of a current award of HB.
- the tenant is **unable** to pay their rent because:
 - they have financial difficulties which prevents them from opening a bank or building society account, have severe debt problems or are bankrupt or;
 - they are considered to have difficulty managing their own financial affairs, for example due to medical problems, addiction, non-English speaking.

When considering direct payments, it is important to understand that different people cope with a range of personal situations in different ways. However, the existence of one or more of the following circumstances **may** point towards tenants who need particular help.

- Medical conditions such as mental ill health, Alzheimer's disease
- Terminal illness
- Learning difficulties
- Physical disabilities and/or are housebound
- Illiteracy or those for whom English is not their first language
- Living alone without the support they need
- Receipt of assistance from a homeless charity
- Addictions to alcohol, substances or gambling

- Receipt of funding from the Supporting People programmes
- A change in lifestyle leading to the tenant being temporarily unable to deal with their financial affairs. For example, bereavement, fleeing a violent relationship, leaving prison, leaving care, homelessness.

The list is meant as a guide only and in no way conclusively identifies an inability of a tenant to manage their own affairs. Likewise, there may be other circumstances that prevent a tenant from receiving direct payments of LHA. It is vital that we consider each case on its own merits and we will not apply a blanket approach when considering whether or not a tenant meets the above criteria.

There are circumstances where we cannot make payments direct to the landlord on safeguard grounds:

- If someone has been appointed to act on a tenant's behalf
- It would supersede the support being given to a tenant to help them take responsibility in managing their own affairs
- The landlord is likely to have difficulty managing their own affairs

The Decision Making Process

Receiving an Application

Either the tenant, landlord or the tenants representative can make a request for LHA payments to be made direct to the landlord. The request is usually made when making a claim for Housing Benefit by completing the relevant section of the application form. If already in receipt of Housing Benefit then a request for landlord payments can be made to us in writing, by telephone, e-mail, or completing a Safeguard Request form. This form can be obtained from us or downloaded from our web-site (www.wigan.gov.uk).

The landlord or tenant's representative must have written authority to act on behalf of the tenant when they make a request for direct payments on all grounds, except rent arrears.

In all circumstances we will require evidence to support the reasons given for the request. It would help to speed up the process if we received these at the same time.

If the tenant has a support worker, then the support worker may be able to request landlord payments under our 'Safeguard Referral Scheme'. The support worker will be able to advise whether or not their organisation is part of this scheme. Members of staff from the council's Housing Options department, as well as Wigan Housing Solutions and the Rent Bond Scheme are all able to make requests in this way.

Gathering Evidence

We will consider any information and evidence received and if this is sufficient we will make a decision.

If the information and evidence is not sufficient we will request further information from either the tenant, the tenant's representative, the landlord or all parties. We may need to discuss the issue with the tenant or their representative to help us to make a decision. If necessary we will arrange a home visit to do this.

Any written request for any further information should be provided within the given timescale. If we do not receive a response either a further request will be made, or the case will be considered on the information available. If necessary we will arrange a home visit to assist with the information gathering.

In some situations where less evidence is required or where it would be impossible to collate any further information, we will make a common sense judgement to reach a decision. When we do this we will record how we arrived at the decision.

Appendix A gives examples of evidence to support a request for direct payments to the landlord.

In all arrears cases, we will require written evidence of the rent arrears or consistent failure to pay their rent.

If we establish that the tenant requires further help or assistance to manage their own affairs we will signpost or assist them to contact organisations that may offer help and support.

Making a decision

We will decide, using the information and evidence available, if it is in the best interest of the tenant to pay the Local Housing Allowance to the landlord. We will record details of each application, the decision made and the reasons for making that decision.

If we wish to make payments of benefit but a Safeguard decision has yet to be made as we are trying to gather evidence, then we will temporarily send payments directly to the landlord. However, this can only be done for a maximum of two months.

Notifying parties affected by our decision

When we have made a decision we will notify the affected parties in writing. The notification will contain:

- the decision.
- the reasons for the decision.
- details of if and when this decision will be reviewed.
- details of appeal rights.

Reviewing a decision to pay a Landlord direct

We will periodically review any decision to pay the landlord direct. We will state in the notification letter the date when the decision is due to be reviewed. The length of the original decision will depend upon the circumstances of the tenant. In extreme circumstances we may decide to pay the landlord indefinitely.

We will contact the tenant and / or their representative 4 weeks before the review date to determine whether or not their situation has changed and if they can now receive payment of LHA directly.

In cases paid direct to landlord because of rent arrears we will be looking for evidence to show that the landlord has tried to recoup the money when we review the decision.

We will not require tenants to complete the standard application form again. In the first instance we will write to them or their representative / support worker to get an update of the situation.

We will continue to make payments direct to the landlord until we have completed the review. **If their circumstances have not changed, we will set a further review period on the claim.**

If we establish that the tenant requires further help or assistance to manage their own affairs we will signpost or assist them to contact organisations that may offer help and support.

Where the circumstances of the tenant have changed and they become able to accept the responsibility of direct payments and pay the rent to their landlord, we will make a new decision to pay the LHA to the tenant and will:

Write to all affected parties advising them of:

- the decision.
- the reasons for the decision.
- the date payments will change.
- their appeal rights.

Amount to be paid to the Landlord

If the Local Housing Allowance entitlement is above the tenant's contractual rent, we will split the payment so that the landlord will receive a payment equal to the contractual rent for that period, and the excess will be sent to the tenant.

If a decision has been made to pay the landlord due to rent arrears, we can pay the excess to the landlord to reduce the arrears for as long as they exist.

Appeals

Anyone affected can ask us to review any decision made regarding direct payments of the LHA.

They can:

- ask for an explanation for the decision.
- ask the council to reconsider the decision.
- appeal against the decision.

Tenants can make a either verbal or written request for a simple explanation of the decision. In all other cases the person must contact us, in writing, with their reasons for their request. They must do this within one calendar month of the date of the decision.

We will then look at the decision again and where appropriate refer the decision to the Tribunals Service.

Appendix A - Evidence to support an application for payments of LHA to a Landlord.

If a tenant or tenant's representative makes us aware that they would prefer their Local Housing Allowance to be paid to the landlord, then the request needs to be supported with written evidence from a third party.

When a request is made by a representative it must be accompanied by written consent from the tenant that the representative can act on their behalf.

Tenants should provide evidence to support their request with their application.

Here are some examples of situations where we may consider paying the landlord direct and the type of supporting evidence that should be provided:

People with medical conditions such as mental ill health or a terminal illness	Written evidence from Care workers, a GP, Adult Services, Hospital
People with learning difficulties	Written evidence from Care workers, a GP, Adult Services, DWP
People with physical disabilities which could leave them housebound	Written evidence from Care workers, a GP, Adult Services, Hospital
Illiteracy or an inability to speak English	Written evidence from Support Organisations
A person receiving assistance from a homeless charity	Written evidence from the Charity
A person who lives at home without the support they need	Any evidence or information that is available
A person with an addiction such as alcohol, substance abuse or gambling	Written evidence from Care workers, a GP, Adult Services, Hospital, Support Organisations
A person receiving funding from the Supporting People scheme	Written evidence from Adult Services
A person who is in financial difficulty	Court Orders, written evidence from Support Organisations, creditors, solicitors
A person who, temporarily, may have experienced a change to their life that means that they are unable to manage their own affairs – this could include cases of fleeing violence, leaving prison and leaving care	Written evidence from Support Organisations, Probationary Service, Adult Services
Evidence of Rent Arrears – 8 weeks or more	Rent records, evidence of enforcement action
Evidence of missed rent payments	Rent records, evidence of enforcement action

This list is not exhaustive.