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London borough of Ealing Benefits Service

Direct Housing Benefit and Local Housing Allowance Payments Procedure

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1. Background

Under the LHA rules, a tenant cannot simply request that their payments are made to their landlord. The default position is that payment will be made direct to the claimant. To protect vulnerable tenants and those who put their tenancies at risk by running into arrears the Local Authority has the discretion to pay the landlord instead.

Direct payments under LHA rules can also be made to landlords to secure or retain a tenancy, provided that in return the landlords charge affordable rents (this will usually be the LHA rate).

Pre-existing regulations – the 2006 Housing Benefit Regulations for both working age and pensioner customers regulate payments of Housing Benefit in the private and social rented sector that do not fall under the LHA rules.

Who does this procedure apply to?

This procedure sets out the process by which officers will make decisions regarding who should be paid Housing Benefit under both the LHA and non-LHA rules.

2. LHA rules

HB paid under the LHA rules only applies to deregulated private sector claimants who:

- ✓ claim HB on or after 7 April 2008, or
- ✓ move to a different address on or after 07 April 2008, or
- ✓ have had a break in their claim for more than a week on or after 07 April 2008

Non-LHA rules apply to claimants who:

- × have a regulated tenancy or registered rent (fair rent registered with the Rent Officer) where the tenancy began before 15 January 1989 or successor tenancy
- × rent from Ealing council
- × rent from a non-for-profit registered housing association
- × live in houseboats, mobile home or caravans
- × the Rent Officer has determined that a substantial amount of their rent is attributable for board
- × rent from a charitable or voluntary organisation or registered social landlord that provides more than a minimal amount of support, care, or supervision or arranges for such to be provided to its tenants

× have been receiving HB continuously for the same address prior to 07 April 2008
Claimants whose HB is assessed on the non-LHA rules retain the right to ask for their payments to be made to their landlords.

3. Procedure aims

Most claimants can manage their finances and unless we receive evidence to the contrary, we will assume that tenants are able to manage and can be paid direct.

The intention of this procedure is to ensure that HB paid under the LHA and non-LHA rules is administered in accordance with the legislation and guidance and that requests for direct payments to landlords are administered efficiently without causing excessive delays in the payment of HB.

This procedure seeks to:

- provide help for vulnerable tenants and to ensure that their benefit will be paid
- prevent rent arrears and thus prevent tenants being put at risk of eviction
- help to sustain tenancies for vulnerable tenants
- reassure landlords that benefit will be paid to them if they have vulnerable tenants
- help to put tenants in touch with the Benefit Service's Local Welfare Assistance Team who can assist people to manage their own financial affairs
- ensure that council staff make reasonable, fair, and consistent decisions regarding benefit payments
- promote a transparent and simple process that is widely understood
- ensure that each case is treated individually, and assumptions are not made
- engage with stakeholders/partners to identify vulnerable tenants
- work with landlords where the claimant regularly fails to pay the rent

The procedure is not designed to:

- replace support that is being received by tenants and helping them to be responsible for their own income and expenditure
- be used by landlords to attempt to bypass the aims of LHA
- be a blanket procedure for agencies providing support to private tenants

4. Paying HB

Who should receive payments under the LHA and non-LHA rules?

It should be noted that an appointee takes the place of the claimant and payments in such cases are made to or on behalf of the appointee in place of the claimant.

The LHA rules require HB payments to normally be paid to:

- the claimant
- the claimant's appointee – the appointee in effect becomes the claimant
- a person (or organisation) aged 18 or more appointed by the claimant but not the claimant's landlord/landlord's agent

The non-LHA rules allow the claimant to choose whether to

- be paid the HB themselves
- request payment to a landlord or agent
- request payment to a third party (or organisation) aged 18 or more

Payments of HB direct to landlord/agent

Mandatory payments to landlords under LHA and non-LHA rules

The council **must** make payments of HB direct to landlords/agents **under the LHA and non-LHA rules** in the following circumstances:

1. There are rent arrears of 8 or more weeks – unless it is in the overriding interests of the claimant not to pay the landlord/agent.
2. Part of the claimant's JSA, ESA, IS, UC or pension credit is being paid direct to the landlord/agent; or
3. Where an authority had decided to pay the landlord before the death of a claimant any outstanding HB at the time of the claimant's death

Discretion to make payments to landlords/agents under LHA and non-LHA rules

The council **may** make payments of HB to the landlord/agent **under the LHA and non-LHA rules** in the following circumstances:

4. Where the first payment of HB is due, and the tenant has not paid all or part of the rent and paying the landlord would be in the interests of efficient administration of HB

5. The claimant has left the accommodation with rent arrears – any outstanding HB up to the level of the arrears

Discretion to make payments to landlords/agents under non-LHA rules only

The council may make payments to a landlord/agent in the following circumstances under the **non-LHA rules**:

6. The claimant asks or agrees to direct payments
7. The council believes that it is in the best interests of the claimant and their family

Discretion to make payments to landlords/agents under LHA rules only

The council may make payments to a landlord/agent in the following circumstances under the **LHA rules**:

8. The claimant is likely to have difficulty in managing their finances
9. It is unlikely that the claimant will pay their rent
10. The authority considers that making payments direct to the landlord will help secure or retain a tenancy
11. The authority was required to pay the landlord direct under rules 1 to 3 above
12. For up to eight weeks while the authority considers whether rules 8 or 9 apply

5. The decision making process

Receiving a request for payments to be made to landlord

A tenant or their representative (including their landlord) can request that benefit payments are made to the landlord. This will normally be by letter from the landlord, tenant or their representative because the tenant either “can’t pay” or “won’t pay” their rent or are eight or more weeks in arrears.

The request must be supported by written evidence from a third party, but initially can be by:

- a letter or email
- a phone call

Gathering information and evidence

Officers will consider the information that has been received and decide whether there is enough evidence to make an appropriate decision. Wherever possible the evidence will be in writing and from a third party e.g. social services, a G.P. a tenant's family or friends or an advisory service such as Age UK.

Evidence can also be accepted from the tenant's family or friends, but a decision should not be made on evidence submitted from the landlord alone.

When deciding that it is improbable that a tenant will pay his/her rent it is likely that evidence will be provided by the landlord or former landlord rather than the tenant. Evidence already held on file for previous claims will be useful in such instances. A tenant who can demonstrate that they have always paid the HB they received to the landlord but has not made up any shortfall cannot be assumed to be unlikely to pay his rent. When arrears reach 8 weeks, however, it will be a mandatory reason for paying the landlord direct and not a discretionary decision.

Tenants who do not want to manage their own affairs may try to secure direct payments to their landlords to avoid the responsibilities that Welfare Reform seeks to implement.

Evidence provided by family members should be provided in writing and will not usually be accepted in isolation of additional evidence.

All representations by landlords must be made in writing supported with details of non-payment of rent or evidence of why the claimant is likely to have difficulty managing their financial affairs. Additional evidence over and above that provided by the landlord will in most instances be necessary to establish that the tenant may have difficulty in managing their affairs.

Evidence of non-payment of rent must be supplied within 7 days to prevent further arrears accruing. Where representations are made without evidence payments will be made to the claimant. The claimant's actions following the making of the first payment can be used to determine whether it is improbable that the claimant will not pay his rent.

The table below outlines possible reasons why a tenant's housing benefit may need to be safeguarded, together with the evidence requirement to substantiate this.

The time limit for providing this information should be kept to a maximum of 14 days and if not provided a decision should be made based upon the information available. In certain circumstances as detailed at rule 12 above payments can be made direct to a landlord for up to 8 weeks.

Making a decision

Officers will make one of the following decisions with reference to the guidance below and write to all affected parties.

- the tenant is vulnerable, and payment of HB/LHA will be made to the landlord

- the tenant is not vulnerable, and payment of HB/LHA will be made to the tenant

Decisions need to be made taking into account all the evidence available. Payments should not be delayed while a decision is pending as the regulations permit payments to be made direct to the landlord for up to 8 weeks in such situations.

Where full information has not been provided, officers will have to make a decision based upon the available information. It should be noted that a failure to provide information or to cooperate on the part of the claimant may indicate that the customer has a need for their HB to be safeguarded. Similarly, it should be noted that sometimes tenants refuse to pay their landlords to bring pressure upon them to carry out repairs. We will not get involved with such disputes but will decide whether to continue paying the tenant or not.

Notifying affected parties

The tenant and/or their representative will be written to and advised of the following:

- the decision
- appeal rights
- contact details for the Local Welfare Assistance team if they do not have a bank account

The landlord will also be written to and advised:

- the decision - and if their tenant has been found vulnerable that payments will be made to the landlord
- if the tenant has not been found vulnerable the landlord's appeal rights against this decision
- request bank details if not previously received

6. Reconsideration and appeals

Decisions as to who we pay are appealable through the usual appeal process.

7. Reviewing a decision to pay a landlord

The circumstances that led to deciding to pay the landlord direct in the first place may no longer exist or be relevant e.g. a tenant who has cleared his arrears that led to direct

payment under the 8 weeks plus arrears rule, may have demonstrated his/her ability to manage their finances by paying off the arrears and making good any shortfall not covered by HB payments.

When a decision to review a payment to a landlord needs to be made it may be necessary to seek up to date information regarding the claimant. This may involve contacting the claimant, landlord appointees or other representatives or organisations as appropriate.

The table below indicates that some decisions to pay the landlord direct should be considered as long term and these may be regarded as not requiring a review unless a change of circumstances is reported.

8. Landlords who are not `fit and proper`

In all rent allowance cases i.e., under LHA and non-LHA rules payment should not be made to the landlord if the authority has made a decision that the landlord is not a `fit and proper` person to receive payments, unless it is in the interests of the tenant for payments to be made to the landlord.

To be considered not `fit and proper` the landlord will need to be considered to have acted inappropriately in relation to Housing Benefit claims. This would include but not be restricted to:

- landlords who have committed, or assisted or failed to report HB fraud
- landlords who knowingly fail to report changes of circumstances that would affect HB
- landlords who do not repay overpaid HB

It should be noted that even if a tenant has rent arrears of 8 weeks or more, that payment does not have to be made direct to the landlord if they are deemed not `fit or proper`.

When deciding to not pay the landlord under the `fit and proper` test consideration must be given to:

- whether it is in the overriding interest of the tenant and their family to make payments to the landlord. The tenant cannot manage their own affairs then payments may continue to be made to the landlord
- if recovery of overpaid Housing Benefit is being made from the landlord via the `blameless tenant` method, payments of HB may continue to be paid to them even though they are considered as not `fit and proper` to receive payment.

If officers consider that a L/L is not 'fit and proper' then they should refer the matter to a manager.

Some grounds for payments to landlords

The following table gives some examples of where it may be appropriate for payments of Housing Benefit to be made to a landlord. The list is not exhaustive and is not intended to be a definitive list of when direct payments will be made.

The second column gives details where evidence could be obtained from, to support the application for payments to a landlord. Again, this is not a definitive list.

Long term

| Grounds | Evidence from |
|---|--|
| Tenant has a learning disability that prevents them from managing their own affairs on a daily basis. | •Care / support Workers • GP • Adult Social Care •DWP – (evidence of benefits) |
| Tenant suffers from a medical condition that makes it hard for them to cope with routine tasks e.g. schizophrenia, dementia and terminal illness. | •Care / support Workers • GP •Adult Social Care • Hospital |
| Tenant has a physical disability that means that they are often housebound making it difficult for them to manage their affairs. | •Care / support Workers • GP •Adult Social Care • Hospital |
| The landlord charges an affordable rent in order that the tenancy could be secured or retained and continues to do so in the case of a review of a direct payment | Is the rent affordable? This will usually be at or below LHA rates. If the tenant can afford to make up a shortfall over and above an LHA cap that the rent could be considered as affordable. |

Temporary / Short Term

| Grounds | Evidence from |
|---|--|
| Tenant has experienced recent changes that has meant they need additional support in managing their affairs e.g. bereavement; (violent) relationship breakdown; period in hospital; leaving prison, leaving care. | •Care / support workers • GP • Adult Social Care • Hospital • Probation officers •Family / Friends |
| Inability to speak English or illiteracy presenting obstacles to them in opening and running bank accounts, reading and dealing with invoices and bills. | • Written Evidence from Support Organisations that arrears / debts have occurred as a result of not understanding correspondence |

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| Grounds | Evidence from |
|--|--|
| Tenant is dealing with (or has a history of) addiction to drugs; alcohol, gambling and a substantial monetary payment to them would present a risk of relapsing. | • Support Organisations • GP • Adult Social Care • Hospital • Care / support workers • Supporting People |
| Tenant has a history of homelessness and / or rough sleeping and is receiving help to sustain a tenancy in the private sector. | • Housing Advice • Advice / Welfare Agencies • Homelessness Teams |

Financial

| Grounds | Evidence from |
|--|--|
| Tenant has severe debt problems e.g. CCJs, Bad credit rating that prevents opening bank accounts; undischarged bankruptcy. | • Creditors • Court orders • Solicitors • CAB • DWP JobCentre Plus are paying benefit direct to a Utility company. |
| Tenant has rent arrears | A letter from the landlord detailing the level of rent arrears. If the arrears are over 8 weeks, payment will be made to the landlord. |
| Deductions are being made from the claimant's Income Support, Jobseeker's Allowance, Employment Support Allowance. Universal Credit or Pension Credit. | Letter from the DWP to the claimant or landlord showing the deductions being made. |

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