

## North Ayrshire Council – LHA Safeguard Policy

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## **Section 1 Background to the introduction of the Local Housing Allowance**

In November 2002 the government published its proposals for a major reform of the housing benefit scheme in its paper *Building choice and responsibility: a radical agenda for housing benefit*. The Local Housing Allowance (LHA) is central to the government's reform of Housing Benefit and its wider welfare reforms agenda. The LHA replaces the previous *rent allowance* given to private tenants to help them meet their rent charges.

The aims of the government's LHA scheme are to promote:

**Fairness** – Local Housing Allowance bases the maximum amount paid to tenants on the size, composition and location of the household. Therefore, two households in similar circumstances in the same area will be entitled to similar amounts of benefits.

**Choice** – Tenants can take greater responsibility and choose how to spend their income in a similar way to tenants who are not in receipt of benefits. Like other tenants, they are able to choose whether to rent a larger property or to spend less on housing and increase their available income. It is possible under the scheme for the amount of LHA paid to be higher than the rent charged. In cases like this the excess LHA cannot exceed £15 per week.

**Transparency** – The current link between Housing Benefit and individual rents is complex and does not set out clearly what level of state support is available for people on low incomes. Clear and transparent sets of allowance rates help tenants (and landlords) know how much financial assistance is available from the state. Tenants are able to compare how much support is available towards their housing costs in different areas and for different property sizes.

**Personal responsibility** – Empowering people to budget for and to pay their rent themselves, rather than having it paid for them, helps develop the skills unemployed tenants will need as they move into work. The Government believes that, wherever possible, Local Housing Allowance should be paid to tenants, as are most other benefits and tax credits.

**Financial inclusion** – Ideally, the Government want people to have their housing payments paid into a bank account and to set up a standing order to pay the rent to their landlord. This has the advantage of being a safe and secure method of payment and provides certainty for landlords that rent will be paid.

**Improved administration and reduced barriers to work** – For working-age tenants, Local Housing Allowance provides greater certainty about what help is available in and out of work. A simpler system also helps speed up administration of housing payments, giving tenants more confidence when starting a job that any in-work benefit will be paid quickly. A more transparent system may also improve the ability of individuals to move between areas and to take advantage of employment opportunities.

### **Rate of Local Housing Allowance**

The rent registration service will use size criteria based on the number of bedrooms and the broad rental market area (BRMA) in which the property is located to determine the rate of the LHA for each category of dwelling.

### **Broad rental market area (BRMA)**

A BRMA is an area:

- ❑ made up of two or more distinct areas of residential accommodation, each distinct area of residential accommodation adjoining at least one other in the area
- ❑ within which a person could reasonably be expected to live, having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel (by public and private transport) to and from facilities and services of the same type and similar standard, and
- ❑ containing residential premises of a variety of types, and including such premises held on a variety of tenancies

The Rent Registration Service has created one BRMA for the whole of Ayrshire.

This means that the LHA rates set for a similar sized property will be exactly the same across Ayrshire regardless of its location.

### **Size criteria**

One bedroom is counted for:

- ❑ Every adult couple
- ❑ Any other adult aged 16 or over

- Any two children of the same sex
- Any two children regardless of sex under age 10
- Any other child

### **Setting the LHA rate and capping rules**

The LHA is a standard rate calculated by reference to the **median** value from a range of rents for properties of a given size in the BRMA. Under the LHA scheme it is possible for the amount of LHA to be greater than the claimant's rent. The maximum amount of LHA that a tenant can receive over and above their contractual rent has been capped at £15 to prevent work incentives being eroded.

### **Benefits Service**

When a claim for benefit is received under the LHA scheme the Benefits Service will take into consideration the number of bedrooms that are required for the household to determine what level of LHA should be used in the calculation of their benefit entitlement.

### **Implementation date**

As from the 7 April 2008 the LHA is being introduced into the deregulated private sector. The LHA will only be awarded to new benefit claims all existing benefit claimants' will only switch when there is a change of address or there is a break in entitlement of one week or more. The LHA is awarded for 12 months from the date of claim unless an update is triggered by a change of circumstance.

## **Section 2 Payment of the Local Housing Allowance & tenants unable to manage their own affairs**

Payment of the LHA will be paid to the claimant rather than the landlord.

Regulation 96(3A)(b)(i) states that payment of a rent allowance to a person's landlord may be made where the authority considers that the claimant is likely to have difficulty in managing their own financial affairs. This regulation gives the Council the discretion to make payment direct to a landlord, as a safeguard to ensure that the rent is paid on time. One of the aims of the housing benefit reform is to encourage tenants to take responsibility for their rent payments and this has to be balanced against the discretion to pay the landlord directly.

The phrase "*is likely*" means that there must be a degree of certainty that the tenant is unable to manage their affairs. It is not sufficient to conclude that there is the *possibility* that the tenant may have difficulty managing their affairs or that, because tenants in certain circumstances carry a *risk* that they *may* be unable to manage their affairs, the Benefits Service should pay the LHA direct to the landlord. Each case needs to be thoroughly investigated when considering representations that a tenant *is likely* to have difficulty in managing their affairs.

Similarly, the Council needs to distinguish between tenants who choose to manage their finances in a less than organised way and those that genuinely have difficulty managing their affairs.

There is no legislative requirement on the Council to be proactive in identifying claimants who are unable to manage their affairs. Instead the tenant will have to apply to the Council for their LHA to be paid to their landlord and supporting evidence from the likes of a Doctor, Social Worker, Support Agencies, Probation Officers, Counsellors, Court Orders etc will be required.

The aims of this safeguard policy are to:

- ❑ Minimise the risk of a tenant from falling into rent arrears with their landlord and reducing the risk of being evicted.
- ❑ Help to sustain tenancies for tenants.
- ❑ Assure landlords that the LHA will be paid if they have tenants who are unable to manage their affairs.
- ❑ Help to put tenants in touch with other agencies where necessary and to give people the opportunity and support to manage their own affairs.

- ❑ To make reasonable, fair and consistent decisions on the merit of each case when deciding if a tenant is unable to manage their affairs.
- ❑ To make the application form easy to complete and ensure that the process is transparent and straightforward.
- ❑ To advise people of their appeal rights where applicable.

This safeguard policy is not designed to:

- ❑ Supersede any support that a tenant receives to allow them the opportunity to manage their own affairs.
- ❑ Be used by any party to circumvent the aims of the LHA scheme.
- ❑ Be seen as a blanket policy for agencies providing support to private tenants.

### **Possible reasons why a tenant may be unable to manage their own affairs**

The Council's Benefits Service will take into consideration all available evidence to help make an informed decision about a person's inability to manage their own financial affairs before applying the Council's safeguard criteria. Each case will be judged on its own merit. The list below provides some indicators of the possible reasons why a person may be unable to manage their own affairs. The list below is not exhaustive.

- ❑ People with learning disabilities that prevent them from managing their affairs. People with severe learning disabilities are likely to have an appointee. People with slight learning disabilities may not. In all cases where there is representation that a tenant is suffering from learning disabilities then confirmation will be sought from a relevant source.
- ❑ Tenant has a medical or physical condition that is likely to impair a person's ability to manage on a day to day basis. The medical condition may be related to mental illness or age related mental deterioration such as early stages of Alzheimer's disease or senile dementia or the person may be housebound.
- ❑ People with difficulty in reading and writing or financial illiteracy. Cases of this nature will be handled sensitively by the Benefits Service. A person who is unable to complete a benefit claim form may be entirely capable of dealing with their own financial affairs or may have adequate support in place to help them. The Benefits Service will accept representations from the claimant or a

third party before reaching a decision. Failing to reply to correspondence and unpresented cheques may be an indicator of difficulty in reading, writing or financial illiteracy.

- English as a second language. It is unlikely that language difficulties alone will be sufficient to consider that a tenant is unable to manage their own affairs. Representation will be accepted from the likes of welfare groups or a support group or community group that the person is unable to manage their own affairs.
- Addiction to drugs, alcohol or gambling. The Benefits Service will consider any evidence from the claimant's Doctor, care workers, social services, and probation services or support organisations for the addiction concerned.
- Severe debt problems. Evidence will be required from creditors, courts, solicitors, help groups etc. In all instances where there is representation that a tenant is likely to have difficulty managing their affairs due to severe debt problems then the tenant will be referred to the Council's Money Advice Service for an assessment before a decision is made.
- Undischarged bankruptcy. The court order or information from a solicitor or trustee will be considered sufficient evidence of bankruptcy.
- An inability to obtain a bank account. The Council's financial inclusion team will provide support to people who are unable to open a bank account with a local bank.

### **Appointees**

- A person who has been appointed to act on behalf of a claimant who is "unable for the time being to act" will not be viewed as being unable to manage their own affairs. Nor will the claimants they act for, until such times as they cease to have an appointee acting for them.

### **Dealing with representations**

The Benefits Service will identify potential cases through representation either in person, via the telephone or in writing by one or several of the following sources:

- **The claimant.** Arrangements will be made for the claimant to complete an application form for their LHA to be paid to a landlord. A claimant will be referred to the Council's Money Advice Service or Financial Inclusion Team where applicable.

- **Friends and family of the claimant.** The Benefits Service will only accept written representations from friends and family of the claimant with detailed reasons and, where available, evidence as to why the claimant is considered likely to have difficulty managing their affairs.
- **The landlord.** The Benefits Service will only accept written representations from a landlord with detailed reasons and, where available, evidence as to why the claimant is considered likely to have difficulty managing their affairs. Representation from a landlord only will not be sufficient for the Benefits Service to decide but the information will be taken into account for any decision reached.
- **Welfare groups / Money Advisors.** The Benefits Service will accept written representations from welfare groups / money advisors along with supporting evidence to show that the tenant is likely to have difficulty managing their affairs.
- **Social Services, Doctors & Probation Officers.** The Benefits Service will accept representations and evidence from Social Services, Doctors and Probation Officers to show that the tenant is likely to have difficulty managing their affairs.
- **Jobcentre Plus or Pension Service.** . The Benefits Service will accept representations and evidence from Jobcentre Plus and the Pension Service to show that the tenant is likely to have difficulty managing their affairs.

### **Standards of evidence**

Evidence does not have to be addressed to the Council for it to accept it but it should be as up to date as possible although older evidence will still be accepted provided it is relevant to the case concerned.

Any verbal or written contact with a claimant or representatives will be noted and treated as evidence.

Evidence from Social Services, Doctors, Jobcentre Plus, The Pension Service, reputable financial institutions and courts will be accepted without question.

The Council's own benefit records and staff knowledge of the claimant or information from the likes of the Housing Services homelessness team will be used to supplement any other evidence received.



## **Making a decision on a tenant's ability to manage their own affairs**

The Benefits Service will only make a decision once there is sufficient information and evidence to do so. Failure to provide information or evidence will not by itself demonstrate that a person is unable to manage their own affairs.

If it is considered that a claimant is unable to manage their own affairs then they will be encouraged to seek support and advice, either within the Council or from other groups, to enable them to be in a better position to manage their affairs.

If a tenant meets the criteria and a direct payment is made to safeguard the rent to a landlord but the landlord is not "a fit and proper" person then the Benefits Service will balance the risk to the claimant and their family against the risk presented by the landlord. If the risk to the claimant is considered greater then the payment will be made to the landlord.

<b>Possible reasons why a tenant is unable to manage their own affairs</b>	<b>Suitable sources of evidence (Not exhaustive list)</b>
Learning disabilities	Letter from support provider Letter from Doctor Letter from Social Worker Internal benefit records & case history Staff knowledge of claimant Visiting officer knowledge of claimant Other Council records
Medical or physical condition	Letter from Doctor Letter from hospital Internal benefit records & case history Staff knowledge of claimant Visiting officer knowledge of claimant Other Council records
People with difficulty reading, writing or financial illiteracy	Letter from support worker Letter from family and friends Internal benefit records & case history Staff knowledge of claimant Visiting officer knowledge of claimant Other Council records
English as a second language	Letter from support group Letter from community group Internal benefit records & case history

	<p>Staff knowledge of claimant  Visiting officer knowledge of claimant  Other Council records</p>
Addiction to drugs, alcohol or gambling	<p>Letter from Doctor  Letter from support worker  Letter from hospital  Letter from care worker  Letter from social services or other council service  Internal benefit records &amp; case history  Staff knowledge of claimant  Visiting officer knowledge of claimant  Other Council records</p>
Severe debt problems	<p>Court documents  Letter from solicitor  Letter from creditors  Letters from help groups  Information from Money Advice / Citizens advice bureau (CAB)  Internal benefit records &amp; case history  Staff knowledge of claimant  Visiting officer knowledge of claimant  Other Council records</p>
Undischarged bankruptcy	<p>Court Order  Letter from Trustee or solicitor</p>
Inability to open a bank account	<p>Letter from Money Advisor  Letter from Council's Financial Inclusion Team</p>

### **Section 3: The probability of rent not being paid and payment of the Local Housing Allowance to the landlord instead of the tenant.**

Regulation 96(3A)(b)(ii) states that payment of a rent allowance to a claimant's landlord may be made where the authority considers that *it is improbable* that the claimant will pay their rent. This regulation gives the Council the discretion to make payment of the LHA direct to a landlord.

The Council need to balance the provisions to pay the landlord directly with the need to promote the aims of the Housing Benefit reforms.

The phrase "*is improbable*" means that there must be a degree of probability that a tenant will not pay their rent. It is not sufficient to conclude that there is the *possibility* that a tenant may not pay their rent.

The Benefits Service will assume that all tenants receiving the LHA will pay their rent unless evidence is received to suggest otherwise. If evidence is received then the Benefits Service will thoroughly investigate each case when considering representations that it *is improbable* that the claimant will pay their rent.

The Benefits Service need to distinguish between tenants who are genuinely unlikely to pay their rent and those who would prefer not to take responsibility or may be unwilling to pay their rent.

#### **Appointees**

- A person who has been appointed to act on behalf of a claimant who is "unable for the time being to act" will not be considered as unlikely to pay. Nor will the claimants they act for, until such times as they cease to have an appointee acting for them.

#### **Dealing with representations**

It would be unusual for a tenant themselves to suggest that it is improbable that they will pay their rent. It is therefore more likely that representations will be made by a landlord (past or present) or a third party who can demonstrate experience or knowledge of the tenant's payment history or behaviour.

The Benefits Service will identify potential cases through representation either in person, via the telephone or in writing by one or several of the following sources:

- **Friends and family of the claimant.** The Benefits Service will only accept written representations from friends and family of the claimant with detailed reasons and, where available, evidence as to why the claimant is considered unlikely to pay the rent. Evidence from family and friends alone will provide useful information but other evidence from other sources must support this. A claimant will be referred to the Council's Money Advice Service or Financial Inclusion Team where applicable. The Benefits Service will not discuss the claimant's claim with family and friends unless the claimant has given consent.
- **The landlord.** All representation must be in writing and include where available, evidence that the claimant is considered unlikely to pay their rent. The landlord (past or present) will have first hand experience of whether a tenant has paid rent previously. There may be legitimate reasons why a tenant has withheld payment of rent for example where a landlord has failed to carry out repairs and the reason for the non-payment needs to be investigated.
- **Welfare groups, Money advisors, Social Services, Doctors and Probation officers.** The Benefits Service will accept representations and evidence from Welfare Groups, Money advisors, Social Services, Doctors and Probation Officers to show that the tenant is unlikely to pay their rent. Persons who have sought money advice, whilst acknowledging that they need support may be unable to deal with their new responsibilities. Advisors dealing with debt problems will have knowledge of the tenant's financial management skills and their evidence will be relevant to the Benefits Service.
- **Jobcentre Plus or Pension Service.** . The Benefits Service will accept representations and evidence from Jobcentre Plus and the Pension Service to show that the tenant is unlikely to pay their rent.

### **Possible indicators that a tenant is unlikely to pay their rent**

- The credit history could be a useful indicator, arrears of utility charges, letters from the tenant's bank, evidence of unpaid standing orders / direct debits could all indicate that the tenant does not manage their money sufficiently well and is unlikely to do so in the future.
- Previous Housing Benefit overpayments or rent arrears for a previous tenancy (Private or Council) and Council Tax arrears. A benefit claimant with a history of rent arrears is more relevant, as this may indicate that a tenant may not place great importance on paying their rent. In situations where records show persistent arrears or a failure to keep to arrangements then the tenant may be considered to be unlikely to pay their rent.

- Some tenants may prefer to have their LHA paid direct to a landlord. If a tenant presents themselves as having no intention of paying their rent to their landlord then the Benefits Service should only act on the tenants instruction where the consequences could damage the landlord financially and lead to an eviction. The Benefits Service will monitor claims like this more frequently, as the likelihood may be that the claimant would not report changes in circumstances promptly.

### **Making a decision on payment of rent**

The Benefits Service will take into account the following factors when making a decision about paying the LHA to a landlord instead of a tenant.

- If a tenant is eight weeks or more in arrears then Regulation 95(1) (b) of the general regulations applies and payment should be made to the landlord under the statutory provisions provided that it is in the interests of the claimant to make such a payment and that the Benefits Service is satisfied that the landlord is "*fit and proper*". The Benefits Service will encourage landlords to report arrears earlier rather than just resorting to the eight-week provision.
- If a tenant is unlikely to pay their rent under Regulation 96 (3A)(b)(ii) but the landlord is not a "*fit and proper*" person then the Benefits Service will balance the risk to the claimant and their family against the risk presented by the landlord. If the risk to the claimant is considered the greater problem then the payment will be made to the landlord.
- Where the arrears arose wholly during a period, for which the LHA has not been paid, then the first payment only should be made to the landlord and future payments to the tenant.
- A tenant who has failed to use Housing Benefit Payments to pay their rent in the past can be assumed to be unlikely to pay their rent unless good reasons for non-payment of rent are provided.
- Any arrangement that a tenant has made to pay their rent will be taken into account along with all representations and evidence received.

### **Making a payment to a landlord before reaching a decision**

Regulation 96 (3B) gives the Council the discretion to make a payment of the LHA to a landlord for a period not exceeding 8 weeks whilst still considering if the LHA payment should be made to a landlord on the grounds that the claimant is either having difficulty managing their own affairs or it is improbable that the claimant will pay their rent. The Council may use this discretion after taking into account the claimant's circumstances and the supporting evidence provided.

## **Section 4 Payment of the first Local Housing Allowance to the landlord**

Housing Benefit Regulations state that "a first payment of rent allowance following the making of a decision on a claim may be made in whole or in part by sending to the claimant an instrument of payment payable to that landlord"

Regulations allow the Council to send the first payment of the LHA to the tenant but with the cheque made payable to the landlord. Only the first payment may be made under this provision. Subsequent payments must be made payable to the tenant unless there are grounds for paying the landlord arising from "unable to manage their affairs" or "unlikely to pay" provisions, as detailed earlier in this document.

The provision can only be made where:

- a) the claimant has not already fully met their rental liability, less ineligible charges, for the period covered by the benefit payment, and;
- b) it would be in the interests of the efficient administration of housing benefit.

In the cases outlined below we will make payment of the LHA payable to the landlord. In doing this:

- It will provide confirmation that a genuine tenancy has been created between landlord and tenant;
- It reduces the potential of abuse where the initial LHA payment is larger than a normal payment due to a delay in deciding a claim.
- It will inform the landlord that the Housing Benefit claim has been determined and that they can make arrangements with the tenant regarding future payments of rent.

### **Circumstances when the first payment of LHA should NOT be made payable to the landlord but sent to the tenant's address by cheque or paid by BACS transfer**

The Benefits Service will not make the first payment to the landlord when there is information to show that the tenant is likely to have paid the rent for the period covered by the first payment.

The Housing Benefit claim form asks whether the tenant has already made rent payments to the landlord, the date payments were made and requests evidence of this.

Where a tenant has already paid rent to the landlord that covers the period up to the date of the claim, this can be accepted as information that the tenant is likely to have paid their rent for the period covered by the first LHA payment. In these instances the first payment should be made payable to the tenant and not the landlord.

If the landlord is not a "*fit and proper person*" then the Benefits Service will make payment of the LHA to the tenant.

### **Circumstances when the first payment of LHA should be made payable to the landlord by cheque but sent to the tenant's address**

If a tenant has not paid their rent then the first payment will be made payable to the landlord.

The payment of the LHA will only be up to the value of the rent for the relevant period any excess LHA will be paid to the tenant.

### **Tenant has requested that the first payment is not made payable to the landlord**

The Housing Benefit claim form advises the tenant that the first LHA payment will be made payable to the landlord where rent is unpaid and invites the claimant to make representations if they find this to be unsuitable.

Where a tenant does not want the first payment made payable to the landlord the Benefits Service will establish that the tenant occupies the property, that the tenant has a genuine liability and the reasons why the payment should not be made payable to the landlord.

The decision made to make the first payment to the tenant and not the landlord will be based on the facts provided by the tenant and any evidence to support this. The Benefits Service will document the decision reached. The landlord has no right of appeal where the Benefits Service does not consider making the first payment to the landlord.

A cheque that is made payable to a landlord and issued to a tenant that is not cashed and is subsequently made payable to the tenant makes the landlord an affected person. The Benefits Service will inform the landlord of the decision to pay the tenant and offer them a right of appeal. The Benefit claim form will advise the claimant that this procedure will followed to avoid any breach of the Data Protection Act.

**Landlord is not considered a "fit and proper" person**

The Benefits Service will not make the first payment of the LHA payable to the landlord where a decision to treat a landlord as not a "*fit and proper*" has been made by the Council unless the payment is for 8 weeks or more and the tenant is in arrears.

**Section 5 Notification of decision & appeal rights**

The Benefits Service will not stop or delay the payment of the LHA while deciding upon a case. All persons affected by the Benefits Service decision will be notified of the decision in writing and advised of their appeal rights.

**A Person Affected is:**

- A claimant
- Someone acting on behalf of the claimant who is appointed by the Courts
- Someone who the Council agrees is appointed to act on behalf of the claimant
- A landlord - but only in matters relating to whom payment of Benefit is to be made
- An agent - but only in matters relating to whom payment of Benefit is to be made
- Any person from whom it is determined an overpayment is to be recovered

**Appeals**

A person affected can query the Council's decision and request further information about the decision within 1 calendar month of the date on the decision letter.

If the affected person disagrees with the initial review of their housing benefit award they then have the right to appeal to an independent Appeals Tribunal the request must be in writing and must be received by the Council within one month of the date on the decision notification letter.



## Section 6 Review periods

Decisions made under the safeguard policy to pay the local housing allowance direct to a landlord will be reviewed in accordance with the timetable below:

<b>Tenant unable to manage their own affairs</b>	Period of review
Evidence received from a Council Service, GP of claimant, DWP, Courts, Financial Institutions that demonstrate that the circumstances of the claimant will be long-term i.e. more than 2 years	The decision to make the payment to the landlord will be reviewed 3 years (36 months) after the decision was first made unless evidence is received in the interim period from the same sources that there has been a change of circumstances
Evidence received from a Council Service, GP of claimant, DWP, Courts, Financial Institutions that demonstrate that the circumstances of the claimant will be short-term i.e. less than 2 years or evidence received from other sources	The decision to make the payment to the landlord will be reviewed 12 months after the decision was first made unless evidence is received in the interim period from the same sources that there has been a change of circumstances

<b>Tenant is unlikely to pay their rent</b>	Period of review
Evidence received from a Council Service, GP of claimant, DWP, Courts, Financial Institutions that demonstrate that the circumstances of the claimant will be long-term i.e. more than 2 years	The decision to make the payment to the landlord will be reviewed 3 years (36 months) after the decision was first made unless evidence is received in the interim period from the same sources that there has been a change of circumstances
Evidence received from a Council Service, GP of claimant, DWP, Courts, Financial Institutions that demonstrate that the circumstances of the claimant will be short-term i.e. less than 2 years or evidence received from other sources	The decision to make the payment to the landlord will be reviewed 12 months after the decision was first made unless evidence is received in the interim period from the same sources that there has been a change of circumstances