

# Local Housing Allowance

## Safeguards Policy & Local Guidance

HOUSING BENEFIT SECTION  
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## **1. Introduction**

The Welfare Reform Act 2007 introduced the Local Housing Allowance scheme which comes into effect from 7<sup>th</sup> April 2008 and changes the way in which Housing Benefit is calculated and paid to people living in private rented sector accommodation.

It will not however, apply to all tenancies, and excludes:

- Local Authority tenancies
- Housing Association tenancies
- Supported accommodation provided by local authorities, social landlords, charities or voluntary organisations
- Tenancies that started before 15/01/1989
- Tenancies in caravans, houseboats, mobile homes and hostels
- Tenancies with substantial board and attendance

1.1 A fundamental feature of the Local Housing Allowance is that a tenant can no longer request that payment is made to a landlord to cover their rent. Payment must, with few exceptions, be paid to the tenant.

1.2 Local Housing Allowance amendment to regulation 12 amends the Housing Benefit (General) Regulations 95 and 96. These regulations set out the circumstances where payment of Rent Allowance may be made direct to a persons' landlord.

1.3 The new Regulation 96(3A) states that 'payment of a rent allowance to a persons landlord may be made where the local authority considers that the claimant is likely to have difficulty in managing his/her affairs, or considers that it is improbable that the claimant will pay his rent'.

1.4 The aim of Reg. 93(3A) is to prevent tenants that are likely to experience difficulties, from falling into rent arrears and ultimately face the risk of being evicted. One of the objectives of the Housing Benefit reforms is to encourage tenants to take responsibility for their rent payments and the Council must therefore balance the provisions available to pay the landlord direct with the need to promote the aims of the Housing Benefit Reforms.

## **2. Policy Intention**

2.1. This policy is intended to ensure that the safeguards in place are applied correctly to prevent the risk of tenants falling into arrears with their rent and losing their home due to eviction. It also aims to allay any fears that landlords may have regarding potentially vulnerable tenants and those who are unlikely to pay.

2.2. In applying the safeguard policy it is important 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.

- 2.3. Tenants who are likely to have difficulty managing their affairs are deemed to be 'vulnerable' tenants. Some tenants may wish to be classed as vulnerable simply because they would prefer to have payments sent direct to their landlord. The 'vulnerability' provision cannot be used to circumvent the fact that there is no longer a provision for the tenant to request direct payments. In most cases there will be a requirement for evidence from professional bodies such as doctors, social workers, probation officers etc.
- 2.4. Carmarthenshire County Council (the Council) assumes that, unless evidence to suggest otherwise is received, all tenants receiving the Local Housing Allowance will pay their rent. Consequently payment will usually be made to the tenant unless any of the other criteria for making payment to the landlord are met.
- 2.5. The circumstances where consideration will be given to paying the Local Housing Allowance directly to a landlord are where:
- **The tenant is 'likely to have difficulty managing affairs'**
  - **The tenant is 'unlikely to pay their rent'**  
or
  - **The tenant is '8 weeks or more in arrears'**

### **3. Tenant is Likely to Have Difficulty Managing Affairs**

- 3.1. Indicators include both the causes and the effects of vulnerability. It will be necessary to consider either, or on occasions both, in any given case. A claimant should not be determined as vulnerable simply because they match one of the indicators below. These are intended purely as a guide and not a definitive list of possible indicators and should in any event, be supported by appropriate evidence.
- 3.1.1. **People with learning disabilities** - these can range from mild to severe problems. People with severe learning disabilities are likely to have an appointee to deal with their financial affairs or be resident in Supported Accommodation. Therefore under normal circumstances the authority would only need to consider those who have slight learning difficulties and evidence from a Support Worker or a Doctor should be provided to satisfy this criteria.
- 3.1.2. **Tenant has a medical condition** - that is likely to seriously impair their ability to manage their affairs on a day to day basis, such as mental illness.
- 3.1.3. **Illiteracy** – such as difficulty in reading and writing or financial illiteracy.
- 3.1.4. **An inability to speak English** – where representation may be made by a landlord, a support group or community group.

- 3.1.5. **Addiction to drugs, alcohol or gambling** - with evidence from a GP, hospital, care workers, social services, probation services or support organisations for these addictions.
  - 3.1.6. **Severe debt problems/ recent County Court Judgements** – with evidence from help groups, creditors, courts, solicitor's etc. In all instances where there is representation that a tenant is likely to have difficulty managing their affairs because they have severe debt problems, the tenant should be offered the opportunity to be referred to CAB (using the ACS procedures) for an independent assessment of their financial situation before we will make a decision.
  - 3.1.7. **Bankruptcy** - the court order should be sufficient evidence.
  - 3.1.8. **An inability to obtain a bank account** – where the Council will ask for letters from banks and evidence from money advisers.
- 3.2. Where a representation is received without sufficient evidence then payments will continue to be made to the tenant. However each case will be looked at on its own merits and a decision may be made to pay the landlord until such time as the appropriate evidence is provided and the decision is made.

#### **4. Possible Indicators that a Tenant is Unlikely to Pay Rent**

- 4.1. Where a representation is received, but with no actual evidence that a person is unlikely to pay their rent, possibly due to the fact that until now the claimant's landlord has been in receipt of direct payments, payment will be made to the tenant.
- 4.2. The actions taken by the tenant once this payment has been received may be treated as further evidence to determine whether a tenant is likely to pay his rent. The following will also be sources of evidence:
  - 4.2.1. The **credit history** could be an 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 money sufficiently well and is unlikely to do so in the future.
  - 4.2.2. The **Authority's, Council Tax Office and Debt Recovery Section** (Housing Benefit overpayments) keep records. In situations where records show persistent arrears or a failure to keep to arrangements that have been made the tenant may be considered to be unlikely to pay his rent
  - 4.2.3. The existence of **County Court Judgements**, although not automatically rendering a person "unlikely to pay", would be taken into account along with other evidence. Consideration should be given to the reason the judgement

was gained. Greater credence should be given to those that were awarded as a result of non-priority debts.

Examples of priority and non-priority debts are given below:

Priority	Non-Priority
Rent	Loans (Unsecured)
Mortgage	Store cards
Council Tax	Catalogues
Water Rates	Club memberships
Gas	Internet provider
Electricity	Mobile phone network

- 4.2.4. A history of **rent arrears** is more relevant as this indicates that the tenant may not place great importance on paying their rent. The consideration that we are required to make is whether “a person is unlikely to pay their rent” not whether a person has a history of failing to make other payments or has experienced debt problems.
- 4.3. Where a person has always paid their rent but has other financial problems, payment will be made to the tenant as there is no evidence to suggest that he/she will not pay their rent. However where a person has not previously had a rental liability and so cannot have failed to pay their rent then other arrears/debts should be taken into account.
- 4.4. A tenant who would pay their rent but may prefer to have LHA paid to their landlord may present himself or herself as having no intention to pay their rent to their landlord. This situation may justify more frequent contact on the basis that their questionable financial management skills will render them less likely to administer their HB claim properly and report changes in circumstances promptly.
- 4.5. Appointees - persons who have been appointed to act on behalf of a claimant who is "unable for the time being to act", should not be considered as unlikely to pay, nor can the claimants they act for, until such time as they cease to have an appointee acting for them.

## **5. Eight-week Arrears Cases**

- 5.1. Housing Benefit (general) Regulation 95 (1) (b) states that payment is to be made to the landlord, where a person is in arrears of 8 weeks or more. The amount of his rental liability is to be paid to his landlord, except where it is in the overriding interests of the claimant not to make payment to the landlord.
- 5.2. This is a mandatory provision for direct payment and unless it is in the overriding interest of the tenant not to do so – there is no other discretion in this matter. However, the Council will need to be satisfied that arrears exist, and the landlord

must provide a statement that shows the rent that is due, any payments that have been made, and the amount that is outstanding is in excess of 8 weeks.  
Fax and e-mail are recommended means of contact for initial contact.

5.3. Where arrears have been confirmed:

5.3.1. The amount payable to the landlord is to be restricted to the rent charged and any arrears that are outstanding.

5.3.2. Where the LHA is greater than the rent charged, consideration will be given to consider paying more than the rent charged, up to the value of the LHA.

5.3.3. The landlord should undertake to advise the Council if the tenant makes any payments towards the level of arrears. This is to ensure that the Benefits Section is aware of the exact level of arrears outstanding,

5.3.4. The case will be monitored to ensure that any excess is not paid to the landlord once the arrears have been cleared

## **6. Making Representations to the Council**

6.1. **Arrears** - As part of this safeguard policy the Council will:

6.1.1. Recommend to landlords that representation is made if the tenant has missed two fortnightly payments (i.e. 4 weeks of rent) rather than wait for the 8 weeks (see 5.1. above).

6.1.2. Where the tenant is 8 weeks in arrear, require a statement from the landlord (see 5.2 above)

6.2. **Vulnerability** –

Representations must be in writing and supported by evidence of why the tenant is considered likely to have difficulty managing their affairs. The tenant must provide consent for the Local Authority to discuss the tenant's claim with family, friends or other organisations involved.

In most cases, potential cases will be identified through representation (which can initially be made either in person, on the phone, by fax or email, or in writing,) by one or more of the following sources:

6.2.1. **The claimant** - Carmarthenshire County Council may consider it is appropriate to suggest to them that they be referred to CAB for money and/or debt advice. They must provide sufficient evidence to support a request.

6.2.2. **Friends and family of the claimant** - All representations must be in writing supported by detailed reasons and, where available, evidence of why the claimant is considered likely to have difficulty managing their affairs or unlikely to pay their rent.

6.2.3. **The landlord** - All representations must be in writing supported by detailed reasons and, evidence of why the claimant is considered likely to have difficulty managing their affairs.

It will not be possible to conclude from the landlord's representations alone that the tenant should be treated as vulnerable. However, it may be apparent from the nature of the representations that the tenant will not be considered as vulnerable. In these instances, a decision may be made that the tenant is not vulnerable and the tenant and landlord will be notified of the decision.

6.2.4. **Welfare groups, Money advisors** - All representations must be in writing although they are likely to arise because the tenant has contacted the welfare group or money advisor for assistance. The representations should be supported by evidence to show that the tenant is likely to have difficulty managing their affairs.

6.2.5. **Social Services, GPs, Probation Officers, Homelessness Section** - Representations must be in writing and must detail the reasons why the tenant is deemed to be likely to have difficulty managing their affairs. Appropriate evidence should be provided.

6.2.6. **Jobcentre Plus, Pension Service or Bond Guarantee Scheme staff & other stakeholders** - Representations must be in writing and must detail the reasons why the tenant is deemed to be likely to have difficulty managing their affairs. Where appropriate, evidence should be provided.

6.2.7. **Appointee** – a tenant will not be considered vulnerable for the purposes of LHA direct payment if there is an appointee looking after his/her affairs. However, where a tenant is not able to answer questions the Council may suggest an appropriate person is appointed to help provide information.

### 6.3. Evidence –

6.3.1. Does not have to be specifically addressed to the council and could be something that pre-dates the investigation; however older evidence may be less relevant or reliable.

6.3.2. Degrees of weight will be attached to each source of information. Evidence from the claimant, their friends and family is important, but it should be remembered that some claimants might want to do everything possible to secure direct payment to their landlord and thus avoid the responsibility that the reforms promote. See **Appendix A** for possible sources of evidence.

6.3.3. Where representations are made by the landlord then verification and evidence must be supplied.

#### **6.4. Submission of Representations –**

6.4.1. A request can be made by the claimant or the person representing the claimant initially either by phone, in writing or in person at the Council's Customer Service Centres.

6.4.2. For ease of administration, and to ensure all the necessary information is collected, the Council will require the completion of a request form. This will also need to be accompanied by any relevant supporting evidence as outlined in Appendix A.

6.4.3. There will be certain items of evidence that will be accepted without question but this may not necessarily result in a request being successful.

### **7. The Decision Making Process**

The Council will adopt the following procedures when making a decision to ensure that it is fair, transparent and in accordance with regulations.

7.1. Where a representation is made that a tenant is **likely to have difficulty managing their affairs** (see also, 3. above) :

7.1.1. When sufficient information and evidence has been gathered a decision on vulnerability can be made without delaying payment of Housing Benefit.

7.1.2. Where insufficient information has been provided an interim decision will be made based on the information available at that time, pending further investigation.

7.1.3. Where it has been difficult to establish the facts to the Council's satisfaction because the claimant has failed to co-operate in the investigation, a decision will be made to determine whether or not that failure to co-operate does in itself demonstrate vulnerability.

7.1.4. In some cases it will be obvious whether the person is vulnerable, in others it will be necessary to reach a decision by carefully balancing all the available facts, i.e. look at the whole picture.

7.1.5. Claimants deemed vulnerable will be encouraged to seek support and advice, either elsewhere in the council or from voluntary groups, to enable them to be in a better position to manage their affairs. This could be anything from money advice to tackling more fundamental underlying issues

- 7.2. Where a representation is made that a tenant is **‘unlikely to pay his rent’** (see 4. above) :
- 7.2.1. Where arrears have arisen over a period when Housing Benefit did not meet the full rental liability and the tenant was not able to make up the shortfall the tenant can not automatically be assumed to be unlikely to pay his rent
  - 7.2.2. A tenant who has failed to use Housing Benefit Payments to pay his rent in the past can be assumed to be unlikely to pay his rent unless good reasons for non payment of rent are provided.
  - 7.2.3. The Council may consider any arrangements that the tenant has made to pay his rent.
  - 7.2.4. Where there is insufficient evidence to suggest that it is likely that a tenant will fail to pay his rent, payment will be made to the tenant. What the tenant chooses to do with this payment will be considered as evidence in determining the likelihood that future payments will be used to pay the rent.
- 7.3. Where a representation is made that the tenant is unlikely to pay his rent on the basis of **existing rent arrears** (see 5. above) :
- 7.3.1. If the tenant is eight weeks or more in arrears Regulation 95(1) (b) applies and payment should be made to the landlord under the statutory provisions.

## **8. Notification of Decision**

- 8.1. Any person affected by a decision relating to a direct payment of Housing Benefit under the LHA scheme may appeal against that decision. Persons affected may include the claimant or the landlord
- 8.2. Notification will be issued to the claimant, landlord (if applicable) or any relevant person explaining the decision and the rights of appeal against the decision

## **9. Review of Policy**

- 9.1. A robust and effective Safeguard policy is essential to ensure as far as possible, that proper payment arrangements are implemented for vulnerable tenants and to also safeguard the position of landlords. The policy will therefore, be kept under continuous review. Any amendments identified through experience and outcomes of decisions will be submitted for approval.

**APPENDIX A - Vulnerability Categories and Possible Sources of Evidence**

<b>Reason for vulnerability</b>	<b>Sources of evidence</b>
Learning disabilities	<ul style="list-style-type: none"> <li>○ Letter from support provider</li> <li>○ Letter from doctor</li> <li>○ Letter from social worker</li> </ul>
Medical conditions	<ul style="list-style-type: none"> <li>○ Letter from GP</li> <li>○ Letter from hospital</li> </ul>
Illiteracy	<ul style="list-style-type: none"> <li>○ Letter from support worker</li> </ul>
Inability to speak English	<ul style="list-style-type: none"> <li>○ Letter from support group</li> <li>○ Letter from community group</li> </ul>
Addictions to: <ul style="list-style-type: none"> <li>○ Drugs</li> <li>○ Gambling</li> <li>○ Alcohol</li> </ul>	<ul style="list-style-type: none"> <li>○ Letter from GP</li> <li>○ Letter from support worker</li> <li>○ Letter from hospital</li> <li>○ Letter from care worker</li> <li>○ Letter from social services</li> </ul>
Severe Debt problems	<ul style="list-style-type: none"> <li>○ Court order</li> <li>○ Letter from solicitors</li> <li>○ Letter from help groups</li> <li>○ Letter from creditors</li> </ul>
Undischarged bankruptcy	<ul style="list-style-type: none"> <li>○ Court Order</li> </ul>
Inability to open a bank account	<ul style="list-style-type: none"> <li>○ Letter from Bank</li> <li>○ Letter from Money advisor</li> </ul>
Arrears/Missed/Erratic Payments	<ul style="list-style-type: none"> <li>○ Letter and Rent Account Evidence from Landlord</li> </ul>