

The Highland Council

Housing Benefit – Local Housing Allowance

Safeguard Policy

1	Introduction
1.1	Local Housing Allowance (LHA) affects any tenant who entered into a deregulated private tenancy from 7 April 2008 or thereafter. (A deregulated tenancy is one that commenced after January 1989.)
1.2	<p>Local Housing Allowance rules do not apply to:</p> <ul style="list-style-type: none"> 🏠 Local Authority tenants; 🏠 tenants of registered social landlords (Housing Associations); 🏠 tenants who have a registered or 'fair' rent; 🏠 tenancies which commenced before January 1989; and 🏠 protected cases such as supported housing provided by social landlords, charities or voluntary organisations, which also provide care, support or supervision or tenancies in caravans, houseboats or hostels.
1.3	When Local Housing Allowance was introduced in 2008, it removed the right from tenants to choose to have their Housing Benefit payments made directly to their landlord. That change in national policy was a fundamental part of the reform of Housing Benefit and was intended to support the Department for Work and Pensions' (DWP) specific aims of personal responsibility and financial inclusion. However, safeguards have been put in place to enable payment to be made direct to landlords in certain circumstances. Please see sections 6, 7 and 8 below for more information.
2	LHA Aims
2.1	The Department for Work and Pensions' fundamental aims of the LHA scheme are detailed in the paragraphs below.
2.1.1	<p>Fairness</p> <p>LHA bases the maximum amount paid to tenants on size, composition and locations of the household. Therefore, two households in similar circumstances in the same area are entitled to similar amounts of benefit.</p>
2.1.2	<p>Transparency</p> <p>A clear and transparent set of allowance rates helps tenants and landlords know how much financial help is available from the state. LHA tenants are able to compare how much support is available towards their housing costs in different areas and for different property sizes.</p>
2.1.3	<p>Personal responsibility</p> <p>Empowering people to budget for and to pay their rent themselves, rather than having it paid for them, is intended to help develop the skills</p>

**The Highland Council
Housing Benefit – Local Housing Allowance**

Safeguard Policy

	unemployed tenants will need as they move into work. The Government believes that, wherever possible, Local Housing Allowance should be paid to tenants, similar to other benefits and tax credits.
2.1.4	Financial Inclusion Wherever possible, tenants housing payments will be paid into a bank account in order that the tenant can set up a standing order/direct debit to pay their rent to their landlord. This has the advantage of being a safe and secure method of payment and provides certainty for landlords that the rent will be paid.
2.1.5	Improved administration and reduced barriers to work For working age tenants, LHA provides greater certainty about what help is available in and out of work. A simpler system also speeds up administration of housing payments giving tenants more confidence when starting a job as 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.
3	Risks
3.1	DWP's specific aims of personal responsibility and financial inclusion bring with them increased risks that some tenants may not or will not use their Housing Benefit entitlement to pay their rent.
3.2	Research has shown that tenants <ul style="list-style-type: none"> 🏠 <i>“who are being paid Housing Benefit appear to hold the view that it represented such a large amount of their income, that should they fall behind with it, catching up would prove very difficult indeed.”¹</i> 🏠 <i>“who had been in rent arrears most commonly cited the following reasons:</i> <ul style="list-style-type: none"> ○ <i>problems in connection with their Housing Benefit payment;</i> ○ <i>other debts and responsibilities; and</i> ○ <i>unemployment.”²</i>
3.3	The Highland Council believes that it should not be assumed at any time that Housing Benefit tenants place any less importance on paying their rent than non-Housing Benefit recipients.
4	Purpose of Safeguard Policy
4.1	The purpose of this policy is twofold:

**The Highland Council
Housing Benefit – Local Housing Allowance**

Safeguard Policy

	<ul style="list-style-type: none"> 🏠 to protect tenants within the Highland Council area by making payments of LHA direct to the landlord in prescribed circumstances; 🏠 to encourage landlords in the private rented sector to let their properties at affordable levels of rent and to make their properties available to Housing Benefit tenants and tenants in receipt of other state benefits and tax credits.
4.2	Direct payments to landlords will be made in cases where the Highland Council determines it unlikely, based on all the factors and evidence provided, that tenants will themselves pay their rent to their landlord.
4.3	This policy, in accordance with DWP guidance, ensures that tenants, who simply would prefer the ease of not having to pay their rent to their landlord, are not excluded from their personal responsibility. In these circumstances, LHA will be paid direct to the tenant rather than to their landlord.
5	Adherence to Policy
5.1	<p>Successful adherence to this policy will:</p> <ul style="list-style-type: none"> 🏠 provide protection for our most vulnerable tenants by providing reassurance that their rent will be paid direct to their landlord; 🏠 help prevent rent arrears and the risk of eviction; 🏠 reassure landlords that Local Housing Allowance will be paid if they have or are approached by vulnerable tenants; and 🏠 promote and support the aims of personal responsibility and financial inclusion.
6	LHA Safeguard
6.1	<p>The Highland Council must pay the landlord directly in the following circumstances:</p> <ul style="list-style-type: none"> 🏠 payments are being made to the landlord from other income-related benefits to clear rent arrears; 🏠 the tenant is in rent arrears equivalent to eight weeks or more.
6.2	In recognition of the risk that some tenants may struggle with the responsibility of budgeting for and paying their rent, the Highland Council has the discretion to make payment to the landlord if we consider:

The Highland Council Housing Benefit – Local Housing Allowance

Safeguard Policy

	<ul style="list-style-type: none"> 🏠 that the tenant is likely to have difficulty managing their financial affairs; 🏠 it is improbable that the tenant will pay their rent <p>Examples where the Council has discretion to pay direct to the landlord:</p> <ul style="list-style-type: none"> 🏠 the tenant is known to have learning difficulties, or suffers from Alzheimer’s disease or has a drug/alcohol dependency that would present difficulties for them to manage a budget 🏠 the Highland Council has evidence that the tenant has consistently failed to pay their rent in the past 🏠 the tenant has previously had payments made to the landlord as a result of rent arrears. <p>Note: In relation to LHA, the option for tenants to request/demand payment direct to their landlord has been removed.</p>
6.3	<p>Since 1 April 2011, the Highland Council has also had discretion to make payment direct to the landlord where the Council considers that direct payment to the landlord will assist the customer in securing or retaining a tenancy. For a tenancy to be secured or retained it is implicit that the rent should be affordable to the tenant.</p>
6.4	<p>The change from April 2011 was introduced to exert a downward pressure on rents for Housing Benefit tenants by encouraging landlords to let at rent levels that Housing Benefit tenants can afford or to open up a let to Housing Benefit tenants in the first place.</p>
6.5	<p>The tenant can only be accepted as being able to retain or secure a tenancy if the rent is at a level the Highland Council considers the tenant can reasonably afford whilst in receipt of Housing Benefit. If the tenant continues to have a shortfall which they cannot meet, it is unlikely that they will be able to meet their rental commitment and will be at risk of eviction. In these circumstances, they will not be able to retain he tenancy and so the safeguard will not apply.</p>
6.6	<p>Once direct payments are being made under the new safeguard, they will continue unless the rent becomes unaffordable.</p>
6.7	<p>The intention is that the rent should be at a level which is affordable to the tenant. In the vast majority of cases this will be the Local Housing Allowance rate which applies to the tenant. However some tenants may decide that they can pay slightly more than the Local Housing Allowance rate if they have other resources. For example, if they have resources</p>





**The Highland Council
Housing Benefit – Local Housing Allowance**

Safeguard Policy

	such as capital to meet a shortfall.
7	Deciding When Direct Payments Should be Made
7.1	<p>An outline of the circumstances and factors to be considered when making a decision following representations for direct payment to the landlord are contained later in this policy.</p> <p>It should also be noted that at no time will a blanket policy be applied to any tenant or group of tenants; all representations made will be decided individually and on their own merits.</p>
7.2	In order to ensure the Highland Council correctly determines cases which genuinely warrant direct payments to landlords, the Council will take steps to establish how the tenant's personal affairs and finances are managed in general terms.
8	Criteria
8.1	The following details are used as guidance when making a decision and are only some examples of factors to be considered. This policy does not constitute a comprehensive guide to decision making or an exhaustive list of circumstances when direct payments to landlords will be made.
8.2	<p>Learning disabilities Tenants with severe learning difficulties will normally have appointees to help manage their financial affairs. This includes dealing with all matters relating to direct payments to landlords for the purposes of LHA.</p>
8.3	<p>Medical conditions The Highland Council must consider any condition that may impair a person's ability to manage on a day to day basis.</p>
8.4	<p>Illiteracy This could take the form of reading, writing or financial illiteracy.</p> <p>The Highland Council must consider factors including how any previous claim was completed and whether the tenant has a history of delaying the provision of requested information.</p>
8.5	<p>Where English is not the tenant's first language The Highland Council is opposed to discrimination on the grounds of sex or marital status, or racial grounds, or on grounds of disability, age, sexual orientation, language or social origin or other personal attributes</p>

The Highland Council Housing Benefit – Local Housing Allowance

Safeguard Policy

	<p>including belief or opinions, such as religious belief or political opinion. The Highland Council will promote and practice equal opportunities in all their services and recognises this is central to the goals and values of the Council.</p> <p>The Highland Council does not believe that just because a tenant does not have English as their first language, they are unlikely to manage their financial affairs.</p>
8.6	<p>Debt problems This includes a large single debt, multiple debts, undischarged bankruptcy, inability to open a bank account etc. All these factors could demonstrate an inability to manage financial affairs and will be taken into account when determining payment of LHA.</p>
8.7	<p>Where a tenant has experienced difficulty in opening a bank account, support and guidance is available to assist in this process. This may be in the form of helping the tenant to open a basic bank account with a recognised financial institution or a budget account with a credit union or equivalent.</p>
8.8	<p>Representations for tenants unlikely to pay their rent mainly come from third parties (such as the landlord), rather than the tenant. When considering these representations the Highland Council will request and review evidence such as:</p> <ul style="list-style-type: none">  Rent arrears from the current or previous landlord(s)  Arrears of utility charges  Unpaid standing orders/direct debits  Arrears of priority debts (i.e. rent, mortgage, council tax, water rates, gas, electric)
8.9	<p>Rent is affordable (Discretion available since 1 April 2011) For existing tenants, the Highland Council must be satisfied that there has been a genuine reduction in the rent charged by the landlord and that the reduced contractual rent is in the tenancy agreement. In the majority of cases, this will need to be a reduction to the relevant LHA rate.</p>
8.10	<p>For existing customers who achieve a reduced rent at their current address the evidence should be clear, for example written agreement from the landlord to vary the rent or, if the tenancy has been renewed, it is at a lower rent than before.</p>
8.11	<p>If the Highland Council is not satisfied that there is a genuine reduction in the contractual rent, payment will be made to the tenant.</p>

**The Highland Council
Housing Benefit – Local Housing Allowance**

Safeguard Policy

8.12	Where a landlord has routinely let to Housing Benefit tenants at affordable rents without direct payments, the Highland Council will make payment to the tenant. It is not the intention to make payment to the landlord as a matter of routine.
9	Representations
9.1	Representation must be made in writing for the Highland Council to consider whether a tenant is likely to have difficulty managing their financial affairs, or paying their rent. This representation does not have to be made by the tenant but must be signed by the tenant (or an appointee).
9.2	One of the key aims of the reform of Housing Benefit is to promote Personal Responsibility. Because of this it is important the Council ensures that only tenants who have or may have genuine difficulties have their Housing Benefit payments paid direct to the landlord. Since April 2011, payment direct to a landlord can be made where there is clear evidence that the landlord has lowered the rent to a level that is affordable for the tenant.
10	Failure to provide supporting evidence
10.1	The circumstances in which a tenant fails to provide evidence to support their request must be considered carefully. Failure to provide supporting evidence could show that direct payments to landlords are not necessary as there is no genuine need. However, the failure to provide the requested evidence could in itself prove that the tenant has an inability to manage their affairs. When evaluating non provision of evidence, consideration should be given to the evidence requested, the efforts made to provide it and the possibility that a referral to an independent advisor may be appropriate.
11	Reviewing decisions
11.1	Most decisions made to pay the landlord direct will need to be reviewed at an appropriate interval. Some decisions where the tenant's situation is unlikely to change due to the long term nature of the situation may not warrant a review at all. Since April 2011, rent paid direct to the landlord on the grounds of affordability, will continue unless the rent becomes unaffordable or there is a change in circumstances that results in a change in the category of dwelling, for example a non-dependant leaves the household.
11.2	Most decisions should be reviewed after an appropriate period, for example, a decision to pay direct to the landlord made due to rent arrears in excess of eight weeks should be reviewed after eight weeks and if the arrears have reduced below the prescribed level, payment

**The Highland Council
Housing Benefit – Local Housing Allowance**

Safeguard Policy

	should revert to the tenant providing there is evidence that the tenant can manage their affairs and is unlikely to fall into arrears again. Cases referred to independent advice agencies should also be reviewed, as the provision of professional advice may lead to the tenant being able to take on the responsibility of paying their rent.
11.3	All decisions following review will be made individually and on the merits of the case in question.
12	Appeal rights
12.1	Any decision made to pay or not to pay the landlord direct carries a right of appeal under The Housing and Council Tax Benefit (Decisions and Appeals) Regulations 2001. Both the landlord and tenant have the right to request a review of the decision or appeal directly against the Highland Council's decision. Any dispute of the decision will go through the Council's reconsideration process before being treated as an appeal.

¹ Local Housing Allowance Final Evaluation: The qualitative evidence of claimants' experience in the nine pathfinder areas

² Local Housing Allowance Final Evaluation: The survey evidence of claimants' experience in the nine pathfinder areas