

THE HIGHLAND COUNCIL

RESOURCES COMMITTEE

1 October 2008

Local Housing Allowance

Report by Depute Chief Executive and Director of Finance

Agenda Item	
Report No	

SUMMARY

This Report provides Members with a progress report regarding the Local Housing Allowance (LHA) scheme which came into effect on 7 April 2008; the impact of the scheme in the Highland context; and an updated LHA Safeguard Policy.

1. Background Information

- 1.1 In October 2002, the Government announced a programme of reform to Housing Benefits, which included the trial of Local Housing Allowance (LHA) in 9 Pathfinder areas. This programme of reform was outlined in the prospectus *Building Choice and Responsibility: A Radical Agenda for Housing Benefit*.
- 1.2 Local Housing Allowance is a reform that has moved Housing Benefit from a system that pays claimants' rents to one that empowers claimants to exercise choice and responsibility and which is fairer and more transparent.
- 1.3 This new scheme only applies to deregulated private tenancies, meaning tenancies entered into since 1989 and not covered by any of the following exemptions: Local Authority tenants, Housing Associations (Registered Social Landlords) such as Albyn Housing Association, Supported Accommodation provided by a charitable or voluntary organisation such as Highland Homeless Trust, Scottish Association for the Care and Rehabilitation of Offenders (SACRO), mobile homes and caravans, board and lodging accommodation.
- 1.4 Tenancies in the Social Sector are exempt from the LHA.

2. Operating Local Housing Allowance

2.1 *How is Local Housing Allowance calculated?*

The amount of Local Housing Allowance is set every month by the Rent Registration Service (part of the Department for Work and Pensions) based on rental information gathered within a defined broad rental market area (BRMA). Highland includes only one broad market rental area. The Rent Registration Service also considers the number of rooms a claimant is entitled to occupy and for which they can claim, known as "size criteria". The Local Housing Allowance rates are publicised every month on the Council's website so that claimants and landlords alike know how much they will get. The Local Housing Allowance has a maximum of a £15 per week limit over and above the rental liability which the claimant is free to use as they wish.

2.2 ***How long does the award last?***

Once a Local Housing Allowance has been used to establish a claimant's maximum benefit entitlement it will apply from the date of the claim for 12 months, unless there is a change in household, change in address or a break in entitlement which exceeds 1 week or more.

2.3 ***Which cases?***

LHA applies to new claims made from 7 April 2008, unless for claims which existed prior to 7 April 2008 which have had a change of address or a break of more than one week in the claim.

2.4 ***Who is the payment made to?***

Local Housing Allowance is normally paid to the claimant and not the landlord. The former provision in the Benefit regulations for a claimant to choose to have their rent paid to the landlord has been removed. However, there is still a provision within the new scheme whereby local authorities can use their discretion to make a payment to the landlord, based on "vulnerability" and poor payment history. Where the claimant has 8 weeks or more rent arrears, local authorities are still required to make payment to the landlord.

3. Impact on Highland

- 3.1 Establishing BRMAs is strictly a matter for the Rent Registration Service and ultimately the Department for Work and Pensions (DWP). The Council acts as agent for the DWP in administering Housing and Council Tax Benefits. Members are reminded that there is no right of appeal against the level of LHA, or the BRMA on which this is based.
- 3.2 With the exception of a small number of houses with Argyll and Bute postcodes, the Rent Registration Service is treating the Highlands and Islands as only one BRMA for the purposes of setting monthly local housing allowance levels. These levels are set using the median of the Inverness rental market.
- 3.3 The Highland Council is so far paying 129 Local Housing Allowance claims, of which 49 claimants are receiving up to £15 per week in excess of their rental liability. 10 of these claimants reside in the Inverness area. Taking all 49 claims together, the Highland Council is paying an excess gross amount of £591 per week for which grant will be paid by DWP. These claimants can use their individual excess payments as they wish.
- 3.4 Across the Highlands, there are 74 claimants receiving benefit entitlement under LHA, which is less than their rental liability. Taken together, the shortfall on these 74 claims amounts to approximately £3,093 per week. As with the former benefit scheme that is continuing for certain types of claim, this shortfall arises for a number of reasons which include that the individual claimant's household income/capital is at such a level that they receive less than the maximum benefit; they are living in accommodation which is too large for their needs; or their weekly rental liability is greater than the amount set by the Rent Registration Service. These claimants are responsible for paying their rent to their landlord including the difference between their benefit entitlement and their rental liability.

- 3.5 There are 6 claimants across Highland receiving an entitlement under LHA which is the equivalent of their rent.
- 3.6 A further 61 claims remain pending awaiting further information from claimants. To date, no LHA claims have been determined as ineligible due to a failure to supply required information.
- 3.7 Closer analysis of the 129 claims already determined demonstrates that LHA levels for Inverness claimants are on the low side for some, with others receiving up to £15 per week over and above their rental liability. Of the 74 claimants who are receiving less benefit than their rental liability, 33 reside in Inverness area. The general trend across the other areas within Highland shows that the majority of claimants are either receiving LHA which equates to the same amount or is up to £15 per week more than their rental liability.
- 3.8 Of the 129 determined claims, 7 claimants are having their payments paid direct to their landlord on the grounds that they experience difficulties with their financial affairs, including payment of their rent.

4. Engagement with Landlords

- 4.1 The Finance Service continues to engage with landlords regarding LHA and has organised two “Landlords Information Days” which were well attended by landlords and related advisers who operate within Highland. These events included sessions on LHA.
- 4.2 A survey, of those landlords who attended the second event, included specific questions relating to LHA. The majority of those who responded to the survey considered that the Council implemented LHA “very well” or “fairly well”.
- 4.3 The respondents were then asked to tell us about any changes they would like the Council to consider regarding the way in which we administer LHA. One respondent considered that the scheme must be allowed to bed in before changes can be truly identified with another citing communication as key to effective administration. Seeking payment direct to the landlord, rather than to the tenant, generated the greatest number of responses.
- 4.4 To date, there have been no formal complaints regarding the implementation and administration of LHA. This success has been achieved in a number of ways, including learning lessons from pilot authorities; publicity; careful planning and management; appropriate training and guidance for relevant staff; ensuring a robust and workable Safeguard Policy is in place; and relevant IT enhancements.
- 4.5 The Finance Service will continue to engage with landlords via the Highland Landlords’ Forum which is now in operation.
- 4.6 As detailed at 2.4 above, local authorities are generally required to pay direct to the claimant. However, should the claimant be in a position whereby they cannot properly handle their financial affairs and will therefore have difficulty paying their rent, the claimant or someone acting on their behalf, or the claimant’s landlord, can ask that payment be made direct to the landlord in accordance with the Council’s

Safeguard Policy. The Safeguard Referral Form which has been specifically designed for this purpose is available on the Council's website and from the Service Point Network/Service Centre. These Forms were also included in the information pack for landlords attending the events.

5. Safeguard Policy

- 5.1 The updated Safeguard Policy (Appendix 1) outlines the circumstances in which payment of Local Housing Allowance may be made directly to the landlord rather than the LHA claimant.
- 5.2 The original Safeguard Policy which was agreed by Members on 13 February 2008 has been reviewed and updated. While there have not been any complaints about or difficulties with the original Policy, officers undertaking the review considered that detailing individuals/organisations from whom supporting evidence would be accepted had the potential of being restrictive and therefore could undermine the ethos of the Policy. The list of individuals/organisations has therefore been removed from the original policy.

RECOMMENDATION

Members are invited to:

- ❖ understand how the DWP's Local Housing Allowance scheme operates;
- ❖ note the impact that LHA is having so far in the Highland context; and
- ❖ approve the updated Safeguard Policy as detailed at Appendix 1 to this report.

Signature:

Designation: Depute Chief Executive and Director of Finance

Date: 16th September 2008

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Background Papers: DWP Guidance and Rent Registration Service correspondence
Exchequer Service Management Information

Equalities Impact

The Council's arrangements for administering Local Housing Allowance have the potential to impact on the whole of the Highland population and therefore all aspects of equalities have to be cross referenced against all duties which apply. This function has been screened for its impact on equalities groups, and does not require a full equalities impact assessment. Equalities Impact screenings will be undertaken where appropriate.

**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	Local Housing Allowance rules do not apply to: <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	Local Housing Allowance removes the right from claimants to choose to have their Housing Benefit payments made directly to their landlord. This change in national policy is a fundamental part of the reform of Housing Benefit and will support the Department for Work and Pensions' (DWP) specific aims of personal responsibility and financial inclusion.
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	Fairness LHA bases the maximum amount paid to claimants 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.
2.1.2	Choice Claimants 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, LHA claimants are able to choose whether to rent a larger property, or to spend less on housing costs and increase their available income.
2.1.3	Transparency A clear and transparent set of allowance rates helps claimants and landlords know how much financial help is available from the state. LHA claimants are able to compare how much support is available towards their housing costs in different areas and for different property sizes.

2.1.4	<p>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 claimants, similar to other benefits and tax credits.</p>
2.1.5	<p>Financial Inclusion Wherever possible, we encourage claimants to have their housing payments paid into a bank account and to 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.</p>
2.1.6	<p>Improved administration and reduced barriers to work For working age claimants, 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 claimants 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.</p>
3	<p>Risks</p>
3.1	<p>DWP's specific aims of personal responsibility and financial inclusion bring with them increased risks that some claimants may not or will not use their Housing Benefit entitlement to pay their rent.</p>
3.2	<p>Research has shown that claimants</p> <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	<p>The Highland Council believes that it should not be assumed at any time that Housing Benefit recipients place any less importance on paying their rent than non-Housing Benefit recipients. There is no evidence within Highland to demonstrate that LHA claimants are choosing to use their Housing Benefit entitlement for purposes other than rent.</p>
4	<p>Purpose of Safeguard Policy</p>
4.1	<p>The purpose of this policy is to protect claimants within the Highland Council by making payments of LHA direct to the landlord in prescribed circumstances.</p>

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 claimants will themselves pay their rent to their landlord.
4.3	This policy, in accordance with DWP guidance, ensures that claimants, 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 claimant 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 claimants by providing reassurance that 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 claimants; and 🏠 promote and support the aims of personal responsibility and financial inclusion.
6	LHA Safeguard
6.1	<p>In recognition of the risk that some claimants 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:</p> <ul style="list-style-type: none"> 🏠 that the claimant is likely to have difficulty managing their financial affairs; and 🏠 it is improbable that the claimant will pay their rent. <p>For example, if the claimant is known to have learning difficulties or a drug/alcohol dependency that would present difficulties for them to manage a budget and the Highland Council has evidence that the claimant has consistently failed to pay their rent in the past, payment will be made direct to their landlord.</p> <p>Note: In relation to LHA, the option for claimants to request/demand payment direct to their landlord has been removed.</p>
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 claimant or group of claimants; 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 claimant's personal affairs and finances are managed in general terms.
8	Criterion
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	Learning disabilities Claimants 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.
8.3	Medical conditions The Highland Council must consider any condition that may impair a person's ability to manage on a day to day basis.
8.4	Illiteracy This could take the form of reading, writing or financial illiteracy. The Highland Council must consider factors including how any previous claim was completed and whether the claimant has a history of delaying the provision of requested information.
8.5	Where English is not the claimant'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 including belief or opinions, such as religious beliefs 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. 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.
8.6	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.
8.7	Where a claimant has experienced difficulty in opening a bank account, support and guidance will be available from the Highland Council to assist in this process. This may be in the form of helping the claimant to open a basic bank account with a recognised financial institution or a budget account with a credit union or equivalent.

8.8	<p>Representations for claimants unlikely to pay their rent mainly come from third parties (such as the landlord), rather than the claimant. 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)
9	Representations
9.1	Representation must be made in writing for the Highland Council to consider whether a claimant is likely to have difficulty managing their financial affairs, or paying their rent. This representation does not have to be made by the claimant but must be signed by the claimant (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 claimants who have or may have genuine difficulties have their Housing Benefit payments paid direct to the landlord.
10	Failure to provide supporting evidence
10.1	The circumstances in which a claimant 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 claimant 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 claimant's situation is unlikely to change due to the long term nature of the situation may not warrant a review at all.
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 should revert to the claimant. Cases referred to independent advice agencies should also be reviewed, as the provision of professional advice may lead to the claimant 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 claimant have the right to request a review of the decision or appeal directly against the decision of the local authority. 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