

# Individual Decision

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The attached report will be taken as an  
Individual Portfolio Member Decision on:

8 May 2008

Ref:	Title	Portfolio Member	Page No.
ID1605	Nominees for LA Appointed School Governors	Cllr Peter Argyle	2
ID1607	Local Housing Allowance – Safeguard Policy	Cllr Laszlo Zverko	4

## Individual Decision

<b>Title of Report:</b>	<b>Nominees for LA Appointed School Governors</b>		
<b>Report to be considered by:</b>	<b>Chairman of the Eastern Area Forum</b>	<b>on:</b>	<b>8 May 2008</b>
<b>Forward Plan Ref:</b>	ID1605		

**Purpose of Report:** To approve nominees for a Local Authority Appointed Governor positions at Brookfields Special School, Denefield Secondary School and Theale Green Secondary School.

**Recommended Action:** To approve the appointments.

**Reason for decision to be taken:** Cancellation of the Eastern Area Forum on 3 April 2008, where the appointments were due to be considered.

**List of other options considered:** Consider the appointment at the next Eastern Area Forum on 16 July 2008.

**Key background documentation:**

- Individual Decision guidance
- Nomination form for Local Authority (L.A.) Appointed Governors

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## **Supporting Information**

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### **1. Background**

- 1.1 The meeting of the Eastern Area Forum on 3 April 2008, where the nominations for a Local Authority Appointed Governors to Brookfields Special School (new nomination), Denefield Secondary School (new nomination) and Theale Green Secondary School re-nomination) were due to be considered, was cancelled.
- 1.2 As there is a delay until the next meeting of the Eastern Area Forum (22 May 2008) the Chairman, Councillor Peter Argyle, has requested that an Individual Decision be taken.
- 1.3 A copy of the nominee's application forms has been made available to the Leader of Council, Opposition Leader, Portfolio Holder, Opposition Portfolio Holder, all Ward Members, the Overview and Scrutiny Chairman and Policy and Development Chairman. Copies of the nominee's application forms are also available upon request to Members of the Eastern Area Forum.
- 1.4 Apart from the nominations under consideration Members are asked to note that there are still LA Governor vacancies for Downsway, Long Lane and Pangbourne schools.

## **Appendix**

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Appendix A – **PART II** - Nomination forms for Local Authority Appointed Governors. *(Paragraph 1 - information relating to an individual)* – If Members wish to see a copy of the part II appendix please contact David Cook, Policy and Communication.

## **Implications**

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**Policy:** None.

**Financial:** None.

## **Consultation Responses**

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**Members of the Eastern Area Forum:** None

**Leader of Council:** None

**Overview & Scrutiny Commission Chairman:** None

**Ward Members:** None

**Portfolio Holder:** None

**Opposition Spokesperson:** None

**Policy Development Commission Chairman:** None

**Local Stakeholders:** None

**Officers Consulted:** None

**Trade Union:** None

## Individual Decision

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<b>Title of Report:</b>	<b>Local Housing Allowance – Safeguard Policy</b>		
<b>Report to be considered by:</b>	<b>Councillor Laszlo Zverko</b>	<b>on:</b>	<b>8<sup>th</sup> May 2008</b>
<b>Forward Plan Ref:</b>	ID1607		

**Purpose of Report:** To establish a Safeguard Policy as required under the new Local Housing Allowance regulations.

**Recommended Action:** To approve the Safeguard Policy.

**Reason for decision to be taken:** To approve the Safeguard Policy

**List of other options considered:** None

**Key background documentation:** None

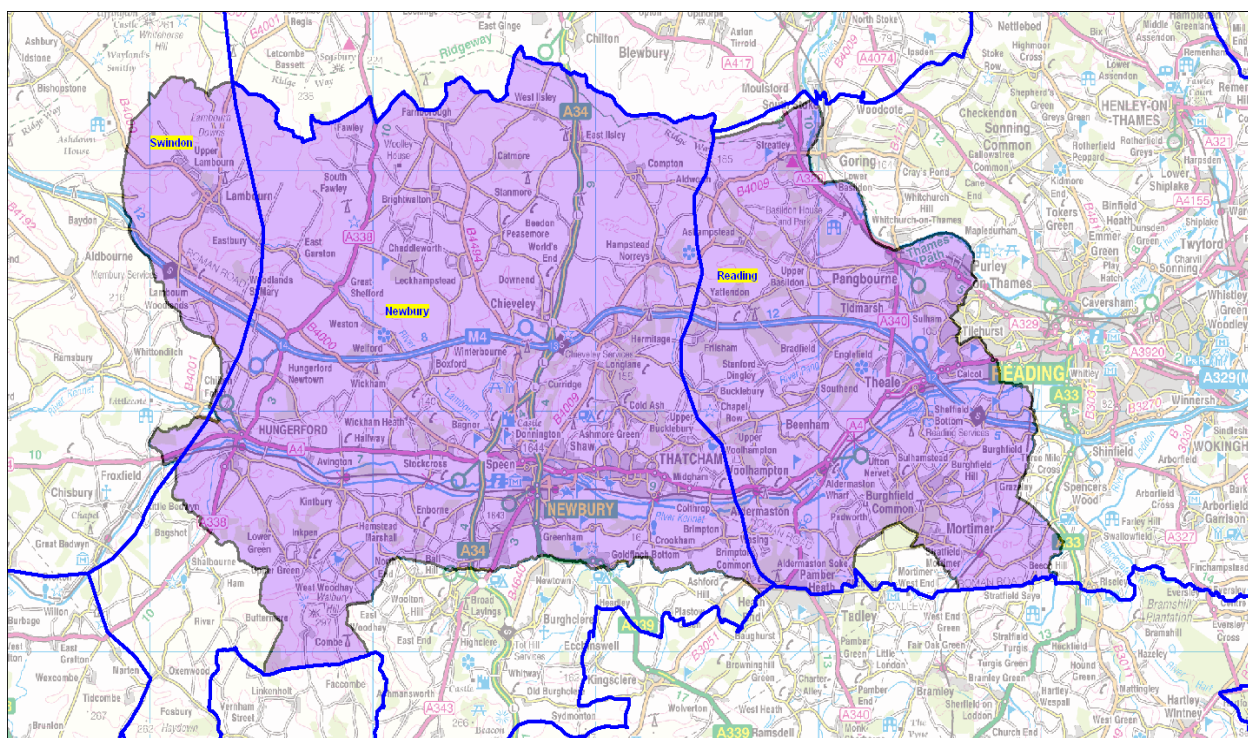
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## Supporting Information

### 1. Introduction

- 1.1 The Welfare Reform Act 2007 introduced the Local Housing Allowance from April 2008. The two key changes are that appropriate rent levels for private sector dwellings will be calculated using rates derived from Broad Market Rental Areas (BMRA) and payments should (subject to certain safeguards) be made direct to claimants rather than to landlords.
- 1.2 Rental properties in West Berkshire will fall into one of three BMRAs, Reading, Newbury & Swindon.



- 1.3 The latest BMRA rates are as follows.

<b>BRMA/WEEKLY LHA RATE APRIL 08</b>	<b>NEWBURY</b>	<b>READING</b>	<b>SWINDON</b>
Room (non self-contained)	£70.00	£81.93	£67.00
1 Bedroom	£132.69	£150.00	£114.23
2 Bedrooms	£173.08	£183.46	£132.69
3 Bedrooms	£206.54	£207.69	£160.38
4 Bedrooms	£334.62	£300.00	£229.62
5 Bedrooms	£553.85	£461.54	£346.15

1.4 Under previous legislation all Housing Benefit claimants had an automatic right to elect to have their housing benefit paid direct to their landlord. Of the existing 1060 claimants in private sector accommodation 670 currently opt to receive their benefit direct. In future payments arising from new claims will have to be paid direct to the claimant unless it can be shown that this would not be in their best interests. The Government's view is that this change will promote greater personal financial responsibility

## **2. Safeguard Policy**

2.1 Whilst payment of benefit direct to the claimant is a key theme of the new regulations, it is recognised that in a minority of cases payment of rent to the landlord may be put at risk. In order to deal with such cases we are required to put a policy in place to attempt to safeguard the claimants housing.

2.2 The Safeguard Policy covers two distinct groups of claimants, those that may have difficulty in coping with managing their own affairs and those claimants who may be unlikely to pay their rent if they receive the benefit payments.

2.3 The new direct payment arrangements have been subject to pilot schemes in 18 authorities and the DWP have issued draft policy documents that have provided guidance on the key issues to be considered when setting a Safeguard Policy.

2.4 The National Federation of Residential Landlords have issued guidance on what it considers best practice and their views have been considered and adopted where appropriate.

2.5 A proposed Safeguard Policy covering both those having difficulty in managing their own affairs and those unlikely payers as Appendix A, the key points to note are:

- The overriding consideration should be to act in a way that is in the best interests of the claimant.
- Payment may be made direct to the landlord where the Council considers that the claimant is likely to have difficulty in managing their own financial affairs or it is improbable that they will pay their rent.
- Claimants, or persons acting on their behalf, may make representations to the Council if they are having difficulty in paying their rent.
- Where there is evidence that the claimant is not paying their rent the Council may make direct payment to the landlord unless it is in the overriding interests of the claimant or their family not to do so.
- When rent arrears reach the equivalent of eight weeks the Council will, in most cases, make payments direct to the landlord.
- The Council will set a review period for each case (not exceeding 12 months) to look at the decision again.
- The Council may not set a review period for claimants who are likely to have a long-term difficulty paying their rent (e.g. severely mentally impaired)

2.6 The impact of the new arrangements will be kept under careful review and amendments to the policy recommended should the need arise.

**Appendices**

Appendix A – Safeguard Policy

**Implications**

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<b>Policy:</b>	The aim of the Safeguard Policy is to protect the Housing arrangements for claimants.
<b>Financial:</b>	None
<b>Personnel:</b>	None
<b>Legal:</b>	None
<b>Environmental:</b>	None
<b>Equalities:</b>	None
<b>Partnering:</b>	None
<b>Property:</b>	None
<b>Risk Management:</b>	None
<b>Community Safety:</b>	None

**Consultation Responses**

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**Members:**

**Leader of Council:** No comments

**Overview & Scrutiny  
Commission Chairman:** No comments

**Policy Development  
Commission Chairman:** No comments

**Ward Members:** n/a

**Opposition  
Spokesperson:** Identified a potential issue around ‘appointees’ not acting in an appropriate manner, the policy has been amended to address this. Also suggested some re-wording around the rent arrears clause in ‘making a decision’ for Unlikely Payers, the wording has been amended.

**Local Stakeholders:** CAB

**Officers Consulted:** Head of Housing & Performance

**Trade Union:** n/a

<b>Is this item subject to call-in.</b>	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>
<p>If not subject to call-in please put a cross in the appropriate box:</p> <p>The item is due to be referred to Council for final approval <input type="checkbox"/></p> <p>Delays in implementation could have serious financial implications for the Council <input type="checkbox"/></p> <p>Delays in implementation could compromise the Council's position <input type="checkbox"/></p> <p>Considered or reviewed by OSC or associated Task Groups within preceding 6 months <input type="checkbox"/></p> <p>Item is Urgent Key Decision <input type="checkbox"/></p>		





# **Local Housing Allowance Safeguard Policy**

## About Local Housing Allowance

Local Housing Allowance is to be introduced nationally with effect 7 April 2008. It will affect claims for housing benefit:

- where a new claim for housing benefit is made and the tenancy is one made with a private landlord;
- where the tenant moves on or after 07/04/08 to a tenancy with a private landlord;
- where there has been a break in a relevant claim for more than one week; or
- a new claim is required following an extended payment period.

One of the government's aims in the Housing Benefit reforms, which are part of the wider Welfare Reform Act 2007, is to encourage personal empowerment, responsibility and financial inclusion.

### **The fundamental aims of the Local Housing Allowance scheme are to promote:**

**Fairness:** Local Housing Allowance bases the maximum amount paid to tenants on the size, composition and location of the household.

**Choice:** tenants are able to take on greater responsibility and choose how to spend their income in a similar way to tenants who are not in receipt of benefits.

**Transparency:** a clear and transparent set of allowance rates helps tenants (and landlords) know how much financial help is available from the state.

**Personal responsibility:** empowering people to budget for and to pay their rent themselves rather than having it paid for them. This will help develop skills unemployed tenants will require as they move back into work.

**Financial inclusion:** ideally, the scheme requires people to have their housing payments paid into a bank account and to set up a standing order to pay their rent to their landlord.

**Improved administration and reduced barriers to work:** for working age tenants, LHA provides a greater certainty about what help is available in and out of work.

## **About this policy**

One of the key aspects of Local Housing Allowance is to empower people to take personal responsibility in their housing and money management.

Another aim of the government's welfare reform is to promote financial inclusion by people receiving their local housing allowance direct into their bank account and making payment by standing order to their landlord. It is thought that this will assist people with essential skills when moving into work.

Many people on benefit already have bank accounts and will be able to manage this straightforward process.

Some people may require information or help to open basic bank accounts and set up standing orders. Some people who have debt may need to consider opening new basic bank accounts from which to manage their benefit and rent payments.

Some people, despite having banking facilities in place, may from time to time experience personal difficulty in taking adequate responsibility to pay their rent to their landlord. In some cases some people may experience these difficulties indefinitely.

West Berkshire Council has adopted the Department for Work and Pension's guidance in formulating this Safeguard Policy.

The LHA legislation is new and therefore this policy will be subject to regular review following any changes in the legislation or relevant case law being established.

## **Safeguard Policy – difficulty paying**

*Identifying tenants who are likely to have difficulty paying their rent*

## **Identifying tenants who are likely to have difficulty paying their rent**

This Council policy deals with:

- When to consider making payments to a landlord
- People who do not meet the safeguard criteria
- Identifying tenants who may meet the safeguard criteria
- Evaluating evidence
- Possible indicators of tenants who may have difficulty paying their rent
- Making a decision
- Reviewing decisions
- Referrals to advice services

## **Data protection**

The claimant's consent to approach individuals or organisations for information is required, unless there is an established legislative gateway permitting the information being disclosed. Only such information as necessary for making a decision on the claim should be obtained.

## **When may the Council make payments to the landlord**

Payment may be made direct to the landlord where the Council considers that the claimant is likely to have difficulty in relation to the management of their financial affairs. The Council will consider whether the extent to which they have difficulty managing their affairs means that they are unable to pay rent to their landlord on time. Most claimants are capable of managing their own financial affairs and it will be assumed that they are making payments of rent to their landlord unless there is evidence to the contrary. Where there is evidence that the claimant is not, or is no longer, paying their rent the Council can make payments direct to the landlord unless it is in the overriding interest of the claimant or his family not to do so. That is, direct payment will serve as a safeguard to ensure that rent is paid on time and the claimant and his family can continue to maintain their home.

The term 'safeguard' is used where direct payments to the landlord helps claimants who might not otherwise be able to pay their rent themselves. It replaces the concept of 'vulnerability' used in previous DWP guidance.

Statute does not set out conditions that must be satisfied in order for the Council to apply the safeguards. However, the overriding consideration should be to act in a way that is in the best interests of the claimant. Therefore, the Council may make payments to the landlord where they consider that the claimant is likely to have difficulty in paying their rent and it is in the interest of the claimant to do so.

In addition, the Council will consider whether the landlord is a 'fit and proper person' to receive direct payments. Even if the landlord is not considered to be 'fit and proper', the Council may still make payments direct if it is in the claimant's interests to do so.

Direct payments will not be made on safeguard grounds in respect of:

- People who have been appointed to act on behalf of a claimant who is 'unable for the

time being to act' **and** the claimants they act for, until such time as they cease to have an appointee acting for them. The Council may review and cancel an appointeeship at any time and give the appointee written notice of the decision to cancel the appointeeship. There may be a number of grounds for cancelling the appointeeship, for example the claimant recovers and can handle responsibility for their claim, or the appointee does not perform their appointee duties properly.

- Where this would supersede the support being given to tenants to help them take responsibility in managing their own affairs
- Where it is the landlord who is the person likely to have difficulty managing his affairs. (For example direct payments should not be considered where the landlord is unable to leave the house to collect the rent).

### **Identifying potential claimants who are likely to have difficulty paying their rent**

Claimants, or persons acting on their behalf, may make representations to the Council that they are having difficulty paying their rent. The Council may also take into account information that is already held within the local authority without the need for formal representation by the claimant. This may, for example, include information passed on by social services departments, which suggests that a claimant is having difficulty paying their rent. The Council may also identify claimants potentially in need of safeguard action from its own face to face contact, for example, when carrying out home visits.

The Council should consider representations from the following sources

- The claimant
- The claimant's
  - Family and/or friends
  - Landlord
  - General Practitioner
  - Probation Officer

The Council may also consider evidence from

- Housing advice officers, Housing rent deposit scheme administrators, or homelessness advice officers
- Welfare organisations, including money advisers
- Social Services departments
- Department for Work and Pensions, i.e. Jobcentre Plus, The Pensions Service
- Homeless charities/organisations
- Supporting People Teams
- This list is not exhaustive

There are three main factors the Council will consider when reaching a decision

- Is the claimant likely to have difficulty in paying their rent? If they are, the Council may decide that it is appropriate to make direct payments
- Is it in the interests of the claimant to make direct payments? In most cases, it is in the long-term interests of the claimant to manage their own affairs and make their own

payments of rent. However, certain individuals may simply not be able to do this reliably

- Could the claimant pay their rent themselves with appropriate help and support? Many claimants, who might otherwise have difficulty in managing their own financial affairs, may be able to do so if given initial help. In these cases, the Council will consider referring the claimant to advice agencies, whether internal or external, for help. However, the Council will not automatically decide against direct payments simply because help or advice has been suggested

Wherever possible, this evidence should be in writing. However, a written declaration is not necessarily evidence that the criteria should be applied, just as its absence is not evidence that it should not. Claimants most in need of safeguard action might have difficulty making representation on their own behalf and be less able to produce evidence to support that need. The Council will consider the evidence provided and make further enquiries when and where necessary. Where representation is received from the claimant without the support of an agency or representative it may be appropriate to offer further help or assistance with their application.

### **Evaluating evidence**

The Council will seek and evaluate evidence about the claimant's circumstances that will allow an informed decision on whether the safeguard criteria should be applied. The Council will always aim to interview the claimant, unless it already has satisfactory written evidence to make a decision. Where possible the Council may seek to use its Housing Benefit Visiting Officers so that they are able to obtain the required information as part of their planned visit. If the claimant has language difficulties and/or possible physical or mental impairment that prevent them from providing answers to Council's questions, the Council may refer to existing local authority procedures in dealing with those claimants. The Council may also refer the claimant to other areas of the local authority such as Adult Services, if it is felt the claimant would benefit from such a referral.

The Council will also obtain, where practicable, written evidence from any relevant third party including, but not limited to, the persons described above. The written evidence does not have to be addressed to the Council but if it is not, the Council must consider the data protection implications if it contains information not relevant to the Council's decision. In these cases alternative evidence should be obtained. Also, the older the evidence, the less reliable it is likely to be.

The Council will attach degrees of weight to each source of information.

The Council will accept without question evidence from

- Social Services
- GP (some GPs charge for providing this information and so claimants will not be expected to obtain and provide evidence that they do not already have)
- DWP, and
- Banks and Building Societies

The Council will **normally** take evidence from welfare organisations, such as the Citizens Advice Bureau and recognised charities, at face value. If the claimant is in receipt of a

rent deposit guarantee, the Council will consider evidence from the rent deposit scheme administrators.

Evidence from the claimant, their friends and family is important but will be carefully evaluated. However, some claimants may be pressured into presenting evidence in a way calculated to secure direct payments to their landlord and this should be borne in mind when examining evidence from them. Ultimately, the Council must consider whether payments direct to the landlord are genuinely in the best interests of the claimant.

The Council will be cautious when considering evidence from a landlord, given their direct financial interest in the outcome. Landlords do however have a valid role to play, but their evidence alone (or together with the claimant's) will not be regarded as sufficient to decide that the safeguard criteria have been satisfied and further evidence may be sought.

### **Indicators that a claimant may have difficulty paying their rent**

There are no indicators that will determine definitively that a person may have difficulty in paying their rent. Therefore, the Council will examine each case on its own merits having given consideration to the facts of the case. A claimant who is unable to pay their rent may have certain conditions that make handling financial affairs more difficult for them but the Council must never decide that a claimant has satisfied the safeguard criteria simply because they match one or more of these indicators. For instance, a person recovering from a gambling addiction may have difficulty managing their financial affairs but attempting to do so may be an important part of their rehabilitation process.

The following list contains some of the characteristics that may indicate that a customer is likely to have difficulty in pay their rent. When considering these characteristics, it is important to ask for, and evaluate, evidence of the effect of these characteristics on the ability to pay rent and then to consider whether direct payments are likely to be in the customer's interests.

- People with **learning disabilities** – people with more severe learning difficulties will normally have appointees to manage their financial affairs. In cases of less severe learning difficulties, the Council will consider evidence from
  - Care workers
  - GPs
  - Social Services departments
  - Other qualified medical practitioners
  - Government departments
  - Supporting People Teams
- People with **medical conditions** – the Council will consider medical conditions that seriously impair a person's ability to manage on a day to day basis, e.g. mental illness (schizophrenia, depression, age-related mental deterioration such as early stages of Alzheimer's disease or senile dementia). Evidence will also be considered from
  - Care workers
  - GPs
  - Other qualified medical practitioners
  - Social Services departments



- Supporting People Teams
- **Illiteracy, or an inability to speak English** – people unable to read, write or speak English **may** have greater difficulty in paying their rent. The Council will consider the effect that this inability has rather than the inability itself. The Council will consider evidence from welfare organisations, ethnic minority link groups etc
- **Addiction to drugs, alcohol or gambling** – the Council will consider evidence from
  - GPs
  - Other qualified medical practitioners
  - Care workers
  - Social Services departments
  - Support organisations for people with addictions
  - Supporting People Teams
  - Probation Services
- People fleeing domestic violence/single homeless (care leavers)/people leaving prison – the Council will consider evidence from
  - Social Services departments
  - Probation officers
  - Womens refuges
  - Support organisations
  - Supporting People Teams

The above list is not exhaustive.

## Effects

People unable to pay their own rent will often have difficulty managing financial affairs more generally. This inability to manage financial affairs may be demonstrated by

- **Severe debt problems/recent County Court Judgements** – the Council will consider evidence from financial help groups, creditors, courts, solicitors, etc
- **Undischarged bankruptcy** – the Council will consider evidence from court documents
- **DWP making deductions from Income Support (IS) or income-based Jobseekers Allowance (JSA(IB)) in respect of housing costs** – housing costs include service charges, utility bills which are part of rent. The Council should only consider this as being an indicator if part of the debt is still outstanding
- **The claimant is in receipt of Supporting People (SP) help** – the Council will consider information that is already available from the benefit system as well as evidence from social services departments and support providers
- **The claimant is in receipt of help from a homeless charity** – the Council will consider evidence from the charity or the homelessness section of the local authority

An inability to provide supporting evidence will need careful evaluation. On the one hand, it might indicate that the need for direct payments does not, in fact, exist. On the other, it could of itself provide the evidence that the claimant has difficulty managing their own affairs. When evaluating a lack of supporting evidence, the Council will consider what information the claimant has been asked to produce and the efforts that they have made to produce it. If the Council is in any doubt, it will consider referring the claimant to an independent adviser for further help.

### **Making a decision**

The Council will decide, when sufficient information and evidence has been gathered, whether to make payments direct to the landlord. The Council will aim to make a decision within 5 working days of receiving all relevant information and evidence.

The Council will not delay making payment of Housing Benefit in order to await the outcome of a decision. Where the Council decides to make payment to the landlord, a deadline should be set of no more than eight weeks for concluding its enquiries and make a decision having regard to all the available evidence. Where the landlord is already being paid, this should continue for a maximum of eight weeks, pending a decision being made. The Council may wish to consider making initial payments to the claimant whilst gathering any available information/evidence. How the claimant handles these initial payments may, in fact, help the Council reach a decision.

If the Council has been unable to establish the facts to its satisfaction because the claimant has failed to co-operate in its investigation, the Council will decide what weight it attaches to this failure. Just because someone has failed to provide evidence should not necessarily determine that direct payments should not be made. However, where evidence of this has been requested, it is reasonable to expect a response. Where no response is received, even after a referral to a welfare organisation, this evidence should be considered in the context of the other information before the Council.

In some cases it will be obvious that the person is likely to have difficulty in managing their affairs, in others the Council will need to make a decision by carefully balancing the facts. Ultimately, the Council's decision will rest on an assessment of what is in the best interests of the claimant.

A record of the Council's conclusion will be kept and a letter issued to the claimant, landlord (if applicable) or any relevant person explaining the decision and rights of appeal against the decision.

If the Council decides to pay the landlord because the tenant has satisfied the safeguard criteria, and there is excess entitlement due to the Local Housing Allowance award, the Council will pay the landlord the full contractual rent. Ineligible charges such as fuel and water would not be deducted as they are a condition of the tenancy agreement, and have to be paid as a condition of occupation of the dwelling. If, however, the service charges are 'not a condition of occupation of the dwelling', e.g. optional laundries charge, these will be deducted from the Local Housing Allowance amounts, and

- The difference paid to the landlord
- Any excess to the claimant

Where direct payments are being made, the Council has the discretion to make payment of any excess (i.e. the amount of benefit payable above the level of the contractual rent, if there is any) to the landlord in order to assist with repayment of the arrears. The Council will estimate the length of time it would take to clear any arrears by this method and to review the case when it is estimated that arrears should have been repaid.

The Council may decide a claimant does not satisfy the safeguard criteria but nevertheless it is likely that they will not pay their rent. The Council will then consider making direct payments as an 'unlikely payer'.

### **Payment to a third party where the third party is their landlord**

The Council has the discretion to pay someone other than the claimant where the competent claimant requests them to do so. This is subject to Regulations 95-97 of The Housing Benefit Regulations 2006 (Sl. 213).

Regulation 95 and 96 set down the circumstances in which payment must or may be made to a landlord. This means that the Council must decline to use its discretion under Regulation 94 to pay the landlord where the claimant has appointed their landlord as their agent, on the basis that this regulation is subject to Regulation 95 and 96. Any decision whether or not to make direct payments to landlords must therefore be under the provisions in Regulations 95 and 96. This decision can be appealed to the appeal tribunal.

The procedures relating to Appeals and redeterminations are detailed in the Housing Benefit Local Housing Allowance Guidance Manual.

### **Review**

If the Council decides that safeguard action is appropriate, it will consider setting a diary date in order to conduct a review of the decision. If the Council feels that the conditions experienced by the claimant are likely to be of a short-term nature, the Council will set an appropriate review date (not exceeding 12 months) to look again at the decision. Where the condition is likely to be of a long-term nature, the Council may decide that it is not appropriate to set a review date. The Council may also set a review date where a claimant has been referred to advice agencies for help in managing their financial affairs. The decision may still be reviewed if there is a relevant change in circumstances or if requested by the claimant.

Where payment is being made to the landlord, this arrangement should continue until a review is completed, a change of circumstances occurs or the claimant requests a review.

### **Referrals to advice services**

Direct payments to the landlord are not the only way in which practical help may be provided. Advice agencies can provide practical advice and support for claimants that may allow them to pay their rent. Claimants may initially have difficulty in paying their rent themselves but may be capable of doing so after having received appropriate help and advice such as understanding their liability to pay rent or opening a bank account. Advice agencies may also have a role in helping, and referring to the Council, claimants who may have intractable difficulty in paying their rent. For instance, they may help the claimant to

prepare a package of relevant information and documentation in support of an application for direct payment. Having this information ready collated should make decision making more straightforward.

The Council will have procedures in place to refer claimants to advice agencies, whether internal or external, for money advice or help in managing their financial affairs.

Referrals may be made regardless of the outcome of the decision on making direct payments. Where it has been decided not to make direct payments, the claimant may still benefit from the provision of money advice. Alternatively, where direct payments are being made, money advice might help a claimant towards eventually managing their own financial affairs.

## ***Safeguard Policy - Unlikely payers***

Identifying people who are unlikely  
to pay their rent

## **Identifying people who are unlikely to pay their rent**

This section applies to

- Making direct payments in respect of people who are unlikely to pay their rent
- People who should not be considered as falling within this category
- Identifying possible non-payment cases
- Evaluating evidence
- The eight week rule
- Fit and proper landlords
- Making a decision
- Reviewing decisions
- Referrals to advice services

## **Data protection**

The claimant's consent to approach individuals or organisations for information is required, unless there is an established legislative gateway permitting the information being disclosed. Only such information as necessary for making a decision on the claim should be obtained.

## **Making direct payments when a claimant is an 'unlikely payer'**

Direct payments to the landlord may be made where the Council considers that it is improbable that the claimant will pay their rent. Most claimants are capable of managing their own financial affairs and it should be assumed that they will make payments of rent to their landlords unless there is evidence to the contrary. Where there is evidence that the claimant is not, or is no longer, paying their rent the Council may make payments direct to the landlord unless it is in the overriding interests of the claimant or his family not to do so – for example where the tenant is in dispute with the landlord over repairs.

The overriding consideration of the Council is to act in a way that is in the best interests of the claimant. If the claimant builds up rent arrears of eight weeks or more, the landlord may commence action to evict the claimant. Once arrears have reached eight weeks, the Council will, in most cases, need to make direct payments and it is important that informed decisions on direct payments are made as soon as they become appropriate.

In addition, the Council will also consider whether the landlord is a 'fit and proper person' to receive direct payments. However, even if the landlord is not considered to be 'fit and proper' (HBR Reg 96 (3A)(b)(ii)), the Council **may** still make payments direct if it is in the claimant's interests to do so.

## **People who should not be considered as falling within this category**

Do **not** consider as unlikely payers

- People who have been appointed to act on behalf of a claimant who is 'unable for the time being to act' and the claimants they act for, until such time as they cease to have an appointee acting for them

The Council may review and cancel an appointeeship at any time and give the appointee written notice of the decision to cancel the appointeeship. There may be a number of grounds for cancelling the appointeeship, for example the claimant recovers and can handle responsibility for their claim, or the appointee does not perform their appointee duties properly.

- Where it is the landlord who is the person likely to have difficulty managing his affairs. For example direct payments should not be considered where the landlord is unable to leave the house to collect rent.

## **Identifying potential unlikely payers**

Claimants, or persons acting on their behalf, may make representations to the Council that they are unlikely to pay their rent. The Council must also take into account information that is already held within the authority without the need for a formal representation by the claimant. This may, for example, include information passed on by social services or housing departments which suggests that a claimant is unlikely to pay their rent.

In most cases, the Council will identify potential cases through representations, either in person, on the phone or in writing, by one or several of the following sources

- The claimant
- The claimant's
  - Landlord
  - Family and/or friends
  - Probation officer
  - Local/council rent deposit schemes, homelessness or housing advice officers
- Welfare organisation, including money advisers
- Social Services departments
- Department for Work and Pensions, i.e. Jobcentre Plus, The Pensions Service
- Homeless charities/organisations
- Supporting People teams

This list is not exhaustive

## Evaluating evidence

The Council will seek and evaluate evidence about the claimant's circumstances that will allow it to make an informed decision on whether they are unlikely to pay their rent. There are three main factors to consider when reaching a decision.

- Is the claimant unlikely to pay their rent? If they are, the Council may decide that it is appropriate to make direct payments
- Is it in the interests of the claimant to make direct payments? In most cases, it is in the long term interests of the claimant to manage their own affairs and make their own payments of rent. However, certain individuals may simply not be able to do this reliably
- Would the claimant be likely to pay their rent themselves with appropriate help and support? Many claimants, who might otherwise be unlikely to pay, may be able to do so, if given initial help. In these cases, the Council will consider referring the claimant to advice agencies, whether internal or external, for help

When the Council is given reason to believe that the claimant will not pay their rent, it will seek to substantiate this belief. One of the key considerations will be past behaviour. If a claimant has a history of not paying rent, this may indicate to the Council that they may not do so in the future (although past behaviour does not necessarily determine future actions).

The Council will endeavour to interview the person and obtain past evidence of 'bad debts', which may or may not include rent arrears.

It will **not** be sufficient to make direct payments simply because the claimant has said that he will not pay his rent. The LA will need to consider factors such as

- Why they say they will not pay their rent
- Whether they have paid rent in the past to the same landlord or more generally
- How they would pay rent if they were working
- Whether rent arrears have built up and what action has been taken by the claimant or landlord
- Whether the landlord is likely to have exerted pressure on the claimant
- Whether other tenants renting from the same landlord have made similar representations



The Council will be cautious when considering evidence from a landlord, given their direct financial interest in the outcome. Landlords do however have a valid role to play, but their evidence alone (or together with the claimant's) should not be regarded as sufficient to decide that the safeguard criteria have been satisfied and further evidence may be sought.

When considering past behaviour evidence must be compelling; occasionally missed payments do not demonstrate that the claimant is unlikely to pay their rent in the future. Evidence must show a sustained period of non-payment. We will consider the following

- Look for early evidence where it appears that the tenant is unlikely to pay their rent
- How far back are the missed payments? More recent and persistent non-payment will carry greater weight. For instance, one payment missed 18 months ago is not sufficient evidence that the claimant will not presently pay their rent
- Is the tenant experiencing wider cash flow or debt problems and making payment to non priority creditors rather than prioritising payment of rent? If so financial literacy or budgeting advice may be more appropriate

Ultimately, the Council will make a decision based on what is in the best interests of the claimant, not the landlord, and that most claimants will benefit from paying rent for themselves. When evaluating evidence, the Council will consider factors such as

- Does the individual landlord already receive direct payments in respect of other tenants?
- Has the landlord shown that he has tried to recover the missing payments from the claimant?
- Does it appear that pressure has been brought to bear on the claimant to present their circumstances in a particular light?

### **Eight week rule (HB Reg 95)**

When rent arrears have reached the equivalent of eight weeks or more, in most cases, the Council will arrange to make payments direct to the landlord. However, landlords will be encouraged not to wait for the eight week period to be reached before contacting the Council. If the landlord informs the Council that a tenant is in arrears with their rent, but that the arrears have not reached the equivalent of eight weeks, the Council will consider interviewing the claimant to discuss the non-payment of rent. After interview, the Council will

consider making direct payments immediately or making a referral to help or advice services before the arrears reach the eight week point.

However, even where eight weeks or more arrears are owed, direct payments are not mandatory if it is not in the customer's overriding interests to make them or if the landlord is not a 'fit and proper person'. For example, a tenant may be withholding their rent where there is a dispute with the landlord over repairs or maintenance. In these cases, it is not mandatory to pay the landlord even where the equivalent of eight weeks arrears is owed. Whilst local authorities should never advise claimants to withhold their rent regardless of the circumstances, if the claimant states that they are doing so due to a dispute, the Council will check whether they have sought legal advice and are keeping the rent to one side such as in a separate bank account or with an independent third party.

### **Fit and proper test**

Local authorities are not obliged to make direct payments where they are not satisfied that the landlord is a 'fit and proper person'. This would normally be as a result of impropriety relating to Housing Benefit such as fraud or knowingly failing to declare changes in circumstances affecting the payment of benefit. Local authorities may choose to consider other areas, such as failure to pay Council Tax or business rates, but generally the lesser the connection that the offence or impropriety has with Housing Benefit, the less relevant it will be.

If the Council believes that a landlord is not a 'fit and proper person' it may still make direct payments to them if it believes that it is in the overwhelming interest of the claimant to do so and that they risk eviction if direct payments are not made.

### **Making a decision**

When the Council has gathered sufficient information and evidence it will make a decision, normally within 5 working days, on whether the claimant is an unlikely payer and whether direct payments are appropriate.

The Council will not delay making payment of HB in order to await the outcome of its decision. Where the Council makes initial payments to the claimant, how they manage initial rent payments should contribute to the ultimate decision. Where the Council decide to make payment to the landlord, the Council will set a firm deadline for concluding its enquiries and make a decision having regard to all the available evidence. Where the landlord is already being paid, this should continue for a maximum of eight weeks, pending a decision being made.

If the Council has been unable to establish the facts to its satisfaction because the claimant has failed to co-operate in its investigation, the Council

must decide what weight it attaches to this failure. However, where evidence of this has been requested, it is reasonable to expect a response. Where no response is received, this evidence will be considered in the context of the other information available to it.

The Council will make a record of its conclusion and issue a letter to the claimant, landlord (if applicable) or any relevant person explaining its decision and rights of appeal against the decision.

The existence of rent arrears can be considered when making a decision on 'identifying people who are likely to pay their rent'. Rent arrears are defined as a sum that has become due and has not been paid. The Council will take care to ensure that the landlord has not included as arrears either of the following

- any rent to be paid in advance of any HB payments due.  
(DWP takes the view that a person cannot be in rent arrears in respect of a period that has not yet been served)
  
- any balance arising from a period where payment of the benefit has been made direct to the landlord but the benefit is below the rent charged and yet the landlord has not made any attempt to collect the balance.  
(It may be that the landlord, by lack of action, has contributed to the level of arrears)

More recent history of non-payment may therefore be a more reliable indicator than that of past history.

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### **Reviewing a decision**

There are two types of review that the Council may undertake

- a) on appeal from a relevant person
- b) a review of circumstances some time after its decision, to establish whether the decision remains appropriate

The procedures relating to appeals and redeterminations are contained in the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001.

The 'person affected' rules will not change as a result of the Local Housing Allowance so a claimant or landlord may appeal against a decision regarding direct payments.

If the Council decide that direct payments are appropriate, it will set a diary date in order to conduct a review of its decision, not exceeding 12 months, to look again at the decision. The Council may wish to set a review date where

a claimant has been referred to advice agencies for help in managing their financial affairs. The decision may still be reviewed if there is a relevant change in circumstances or if requested by the claimant.

Where direct payments are being made due to rent arrears, the local authority has the discretion to make payment of any excess (i.e. the amount of benefit payable above the level of the contractual rent, if there is any) to the landlord in order to assist with the repayment of the arrears. The Council will estimate the length of time it would take to clear any arrears by this method and to review the case when it is estimated that arrears should have been repaid.

There may be instances where, due to the level of arrears, repayments may take longer than 12 months. The Council will still review the case within or at the 12 month maximum time limit allowed, and request up to date information on the level of arrears. These will be checked to establish if the tenant is taking appropriate measures to reduce the arrears. Also lump sum or additional payments could have been made by the tenant, and therefore the arrears repaid at a date earlier than expected by the Council.

Where the payment is being made to the landlord, this arrangement should continue until a review is completed, a change of circumstances occurs or the claimant requests a review.

### **Referrals to advice services**

Claimants who are considered unlikely to pay their rent will be encouraged to seek money advice. In many cases, effective advice on handling money and everyday expenses may remove or reduce the need for direct payments to be made.

The Council will have procedures in place to refer claimants to advice agencies, whether internal or external, for money advice or help in managing their financial affairs.

Referrals may be made regardless of the outcome of the decision on making direct payments. Even where it has been decided not to make direct payments, the claimant may benefit from the provision of money advice. Alternatively, where direct payments are being made, money advice might help a claimant towards eventually managing their own financial affairs.