



WEST SOMERSET COUNCIL

Corporate Policy for Local Housing Allowance Safeguards Policy

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1 **Policy**

Introduction

In line with the aims of the Local Housing Allowance (LHA) scheme, West Somerset Council will pay LHA to the claimant (tenant) rather than to the landlord or landlord's agent.

The purpose of this policy is to set out the circumstances in which the Council will apply safeguard action and pay LHA direct to the claimant's landlord (except where the landlord is not a 'fit and proper person'¹).

Aims of the Policy

- To provide a safeguard for vulnerable tenants and reassure them we will pay their benefit
- To prevent rent arrears and claimants being put at risk of eviction
- To help to sustain tenancies for vulnerable tenants
- To reassure landlords their rent will be paid if they have vulnerable tenants or they are approached by vulnerable tenants
- To make reasonable, fair and consistent decisions
- To promote a transparent and simple process that is easily understood.

This policy is **not** intended to:

- Take the place of support being given to tenants to allow them to manage their own income and capital
- Be used by landlords to avoid the aim of the LHA scheme
- Be a blanket policy for agencies providing support to private tenants
- Undermine the rights of tenants to receive payment directly to themselves

Mandatory Direct Payments to Landlords

We will pay a tenant's benefit direct to the landlord where a claimant is:

- 8 or more weeks in arrears with their rent (unless the Council considers it to be in the overriding interest of the tenant not to make direct payments), or
- Having deductions from their Income Support, Pension Credit or Jobseeker's Allowance to pay off rent arrears

Discretionary Direct Payments to Landlords

The Council will have the discretion to pay a claimant's LHA direct to the landlord where it considers:

- The claimant is likely to have difficulty managing their own affairs (they **can't** pay); or
- It is unlikely the claimant will pay their rent (they **won't** pay).

We will base decisions on whether or not a claimant 'can't pay' on evidence regarding the claimant's vulnerability.

We will base decisions on whether or not a claimant 'won't pay' on evidence of arrears from the landlord and any evidence of previous problems in maintaining rent payments.

The Council may continue to pay a tenant's LHA direct to the landlord where it previously made a mandatory direct payment.

We also have the discretion to make the first payment of LHA following a new claim or a change of address by cheque, payable to the landlord but sent to the tenant. We may do this where:

- a large amount of LHA is payable because we backdated the claim or because there was a delay in processing the claim; and
- the tenant has not already paid the landlord for the period the payment is for; and
- we have reason to believe the tenant would not pay the landlord if they were to receive this money direct from us.

Identifying Potential Cases

Usually, we will identify potential cases through representation, either in person, on the phone or in writing.

We may also consider information we already hold without the need for the claimant to contact us.

We will consider representations from the following people:

- The claimant
- The claimant's:
 1. Family and/or friends
 2. Landlord
 3. General Practitioner (GP)

4. Probation Officer

We will encourage people to complete a 'Request for Direct Payment' form, available from West Somerset Council, or the Council's website.

Where representations have been made by the claimant's family or friends, we will not discuss with that person details of the claim without getting the claimant's written consent allowing us to do so.

It will not be possible to decide from a landlord's representations alone that we should treat a tenant as vulnerable. In such cases we will visit the claimant in their home.

We will accept without question, evidence from:

- Social Services
- GP's
- Department for Work and Pensions (DWP)
- The Financial Assistance and Benefits Team (the 'FAB' team)
- Reputable financial institutions and welfare groups with the 'Legal Services' quality mark

Request for 'Direct Payment'

Tenants or landlords must request direct payments in writing, either in a letter or using a 'Request for Direct Payment' form.

Each application must be supported by relevant evidence and information (detailed later on in this policy). Where a claimant, landlord or representative does not provide sufficient evidence and information, we will request the missing evidence and information within 7 days of getting a request for direct payment. We will allow a one month time limit for them to provide the information we need.

If, after a month, we still do not have all the information we need to make a decision, we will close the request and continue to pay the tenant.

People we will not consider as vulnerable or unlikely to pay their rent

We will not consider the following people as vulnerable or unlikely to pay:

- People who have been appointed to act for a tenant who is 'unable for the time being to act'
- Tenants who have an appointee acting for them
- Landlords who are likely to have difficulty managing their affairs

Decisions on Safeguard Action

We aim to make a decision on safeguard action within 14 days of receiving all the evidence and information we need to make a decision.

To ensure consistency a senior benefits officer will approve all decisions on safeguard action. We will properly record details of our decisions on the claimant's case notes.

Where we decide to apply safeguard action and make payments direct to the landlord we will write to the tenant and/or their representative and tell them:

- The decision and reasons for the decision
- If and when we will review the decision
- Their right of appeal

We will also write to the landlord and tell them:

- The amount of LHA we will pay to them on behalf of their tenant
- If and when we will review the decision

Where we decide not to apply safeguard action, we will write to the tenant and/or their representative and tell them:

- The decision
- The reason for the decision
- Their right of appeal
- Any advice agencies which may be able to help them

Where a landlord requests direct payment and we decide not to apply safeguard action, we will write to the landlord and tell them:

- The decision and the reasons for the decision
- Their right of appeal

Direct Payments where LHA Rent exceeds the Contractual Rent

Where we decide to apply safeguard action and the tenant's maximum eligible LHA is higher than their contractual rent, we will:

- Pay the landlord an amount up to the contractual rent; and
- Pay the claimant any excess LHA (capped at £15 a week)

If the tenant is in arrears, we may pay any excess direct to the landlord until the arrears are cleared.

Appeals and Disputes

Anyone affected by a decision about safeguard action can

- Ask for an explanation of the decision
- Ask us to reconsider our decision
- Appeal against our decision

They must do this within one month of the date of our decision.

Reviews

In all cases where we apply safeguard action, we will set a review date.

We will set reviews periods for any period between six months and three years depending on the likelihood of the tenant becoming able to manage their own affairs in the future. For example, we will grant a six month review period for a tenant recovering from an addiction while we will set a three year review period for a tenant suffering from severe health problems which is unlikely to improve.

If the tenant has a relevant change in their circumstances we will also review our decision on direct payment.

2 Mandatory Direct Payments to Landlords

Tenant is 8 or more weeks in arrears with their rent

A decision to pay benefit direct to a landlord where there is rent arrears can only arise if the landlord or someone else informs the Council there are 8 weeks or more rent arrears.

Rent arrears are defined as a sum that is due but has not been paid. Landlords cannot count as arrears any rent due for a future period.

Where there is a shortfall between a tenants' LHA and their rent, they will be required to pay the difference (a 'top-up'). Unpaid top-up amounts can count as arrears.

Each request must be accompanied by proof of the rent arrears, for example, a copy of the tenant's rent book or the landlord's own records.

Appendix A is a summary of the decision making process.

Where there is sufficient evidence of 8 weeks rent arrears we will apply safeguard action and pay the tenant's benefit direct to their landlord.

We will write to the tenant and ask them to tell us immediately if they are:

- Not more than 8 weeks in arrears

- Withholding rent because of a dispute with their landlord

We will review our decision where:

- the tenant subsequently provides evidence they are not in arrears, or
- they are withholding payments because of a dispute (for example, they are holding back the rent because the landlord is not carrying out necessary repairs to the accommodation)

If there is a dispute we will:

- Suspend benefit payment immediately; and
- Check whether the tenant has sought legal advice and is keeping the rent to one side, such as in a separate bank account or with an independent third party, before continuing to pay the tenant.

In every case, we will try to establish if it is in the overriding interest of the tenant not to make payments to the landlord.

Where a tenant's arrears subsequently falls below the equivalent of 8 weeks, we will not automatically revert payments to the tenant, unless there is evidence the tenant has made arrangements to pay their landlord. For example, they have set up a standing order arrangement to pay the landlord their rent and the payment is set up to pay the landlord immediately after the LHA goes into their account.

Tenant is having deductions from their IS, PC or JSA to pay off Rent Arrears

The DWP will send the Council form A76C when direct payments to a landlord start and form A79C when they end.

While the DWP are taking deductions from the claimant's IS, PC or JSA, we will pay the claimant's Housing Benefit direct to the landlord.

When the DWP stops taking deductions the Council will stop paying the claimant's Housing Benefit to the landlord unless the claimant is in rent arrears, is vulnerable or is unlikely to pay their rent.

3 Tenants likely to have difficulty managing their own affairs

Introduction

Regulation 96(3A)(b)(i) of the Housing Benefit Regulations 2006 allows the Council to pay LHA direct to the tenant's landlord where the tenant is likely to have difficulty managing their affairs.

The purpose is to prevent tenants who are likely to experience difficulties from falling into rent arrears and potentially losing their home.

One of the aims of the LHA scheme is to encourage tenants to take responsibility for paying their rent. We must, therefore, balance the provisions to pay the landlord direct with the need to promote the aims of the LHA scheme.

There must be a degree of certainty the tenant will be unable to manage their affairs, not there is merely a possibility. We must also consider if the extent to which they have difficulty managing their affairs means they are unable to pay rent to their landlord on time.

We will also need to distinguish between those tenants who choose to manage their finances in a less than organised way and those who genuinely have difficulty managing their affairs.

We will view tenants who have difficulty managing their affairs as ‘vulnerable’ and will apply safeguard action.

Possibly Indicators of Vulnerability

By indicators we mean both the causes and the effects of vulnerability. We will need to consider either, or sometimes both, in any given case. We will not decide a claimant is vulnerable simply because they match one of the indicators below. We will consider each case on its own merits.

Appendix B is a summary of the indicators listed below and the sources of evidence we would seek to build a picture of the claimant’s circumstances.

Causes of Vulnerability

People with Learning Disabilities

People with severe learning difficulties are likely to have an appointee to deal with their financial affairs, in which case we will pay their LHA to the appointee.

For people with slight learning difficulties, we will seek confirmation from their care worker or their GP.

Medical Conditions

We will consider those conditions that seriously weaken a person’s ability to manage on a day-to-day basis. Such conditions include schizophrenia, depression and age-related mental deterioration such as early stages of Alzheimer’s disease or senile dementia.

We will also look at how any physical impairment makes it difficult for a person to manage their affairs. We will consider how a claimant conducts their other financial affairs. For example, a person’s care worker may collect their benefits from a Post Office by signing the proxy arrangements, paying their bills at the same time. Such an arrangement is not possible for LHA payments and we would therefore pay direct to the landlord.

Life Events

We will also look at how a recent life event has meant a tenant needs additional support in managing their affairs. For example, a recent bereavement, fleeing domestic violence, a period in hospital, leaving care or leaving prison.

Impaired Literacy

In deciding whether a person may be illiterate, we will look at how the claimant made previous claims for benefit. They may have asked someone else to fill in the claim form for them or they may have filled it in but it was not complete. Enquiries made by us may have taken longer than is normal to sort out.

On the other hand, a person who is unable to complete their claim form may be able to deal with their finances or may have support in place to help them.

Poor literacy may be demonstrated by an inability to deal with payments sent. Failure to reply to correspondence and un-presented cheques may be an effect of some form of illiteracy.

An inability to speak English

Language difficulties alone are unlikely to lead to a decision that a tenant is unable to manage their financial affairs. Other family members or a support worker could help a claimant to open a bank account and set in place a system for paying rent on a regular basis

Addiction to Drugs, Alcohol or Gambling

Where a claimant is, or has a history of, addiction to drugs, alcohol or gambling, and a large monetary payment to them would present a risk of relapsing, we will consider paying LHA direct to the landlord.

Effects of Vulnerability

We will also look at the possible effects of vulnerability, such as:

- Where a tenant has severe debt problems or a recent County Court Judgements has been made against them, we will refer them to the West Somerset Advice Bureau for an assessment before making a decision on direct payment
- Where the claimant has an undischarged bankruptcy
- Where the claimant is unable to open a bank account
- Where the claimant is getting Supporting People help
- Where the claimant has a history of homelessness and is getting help from a homeless charity

Making a Decision

We will continue to pay LHA to the tenant until we make a decision on direct payment. How the tenant handles these payments may help us reach a decision on vulnerability.

Where we decide, on receipt of a request, it is **likely** the tenant is vulnerable we may pay the tenant's LHA direct to the landlord while we make enquiries. We will set a deadline of no more than 8 weeks in which to finish our enquiries and make a decision.²

We aim to make a decision on safeguard action within 14 days of gathering all the evidence and information we need.

Usually, it will be obvious a claimant is likely to have difficulty managing their affairs. In others, we will reach a decision by carefully balancing the facts. Ultimately, our decision will rest on an assessment of what is in the best interests of the claimant.

4 Tenants Unlikely to Pay Their Rent

Introduction

We will assume all tenants receiving LHA will pay their rent and unless:

- Evidence suggests otherwise or
- Any of the criteria for making mandatory payment to the landlord are met

Regulation 95(3A)(b)(ii) of the Housing Benefit Regulations 2006 allows the Council to pay LHA direct to the tenant's landlord where we consider it is improbable the tenant will pay their rent.

The intention is to protect tenants who are likely to act irresponsibly from falling into arrears.

The phrase 'is improbable' means there must be a degree of probability that the tenant will not pay their rent, not that there is a mere possibility. Many tenants, regardless of their benefit status, carry the risk that they may not pay their rent. We will investigate each case thoroughly.

We need to distinguish between tenants who are genuinely unlikely to pay their rent and those who may claim they are not likely to pay their rent because they would prefer not to take responsibility.

Where we are satisfied a tenant is unlikely to pay their rent, we will apply safeguard action and pay their LHA direct to their landlord, unless is in the overriding interests of the tenant or their family not to do so, for example, the tenant is in dispute with their landlord over repairs.

² Regulation 95 (3B) of Housing Benefit Regulations 2006

Possible Indicators that a Claimant is unlikely to pay their rent

The Council has to decide if a person is unlikely to pay their rent, not whether or not a person has a history of failing to make other payments or has experienced debt problems. Therefore, a history of rent arrears is more relevant as this indicates the tenant may not place great importance on paying their rent. This could be in their current tenancy or a previous tenancy.

A history of not paying rent may indicate a tenant will not do so in the future, but the evidence must be compelling; occasional missed payments do not demonstrate a tenant is unlikely to pay in the future. Evidence must show a sustained period of non-payment or frequent underpayment.

Where a tenant has always paid their rent but has other financial problems, we will continue to pay the tenant. However, where a person has not previously had a rental liability and so cannot have failed to pay their rent, we will take into account other arrears and debts.

Useful indicators that a tenant does not manage their money sufficiently well and is unlikely to do so in the future include:

- Credit history
- Arrears of utility bills
- Letters from the claimant's bank (bank charges, evidence of unpaid standing orders and direct debits, unauthorised use of an overdraft facility)

We will check Council Tax and Sundry Debtor records. We may consider the tenant to be unlikely to pay their rent where these records show persistent arrears or a failure to keep to payment arrangements.

The existence of County Court judgments would not automatically mean a claimant is unlikely to pay but we will take them into consideration. We will also look at the reason the judgement was awarded. We will give greater weight to those judgements awarded as a result of priority debts.

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

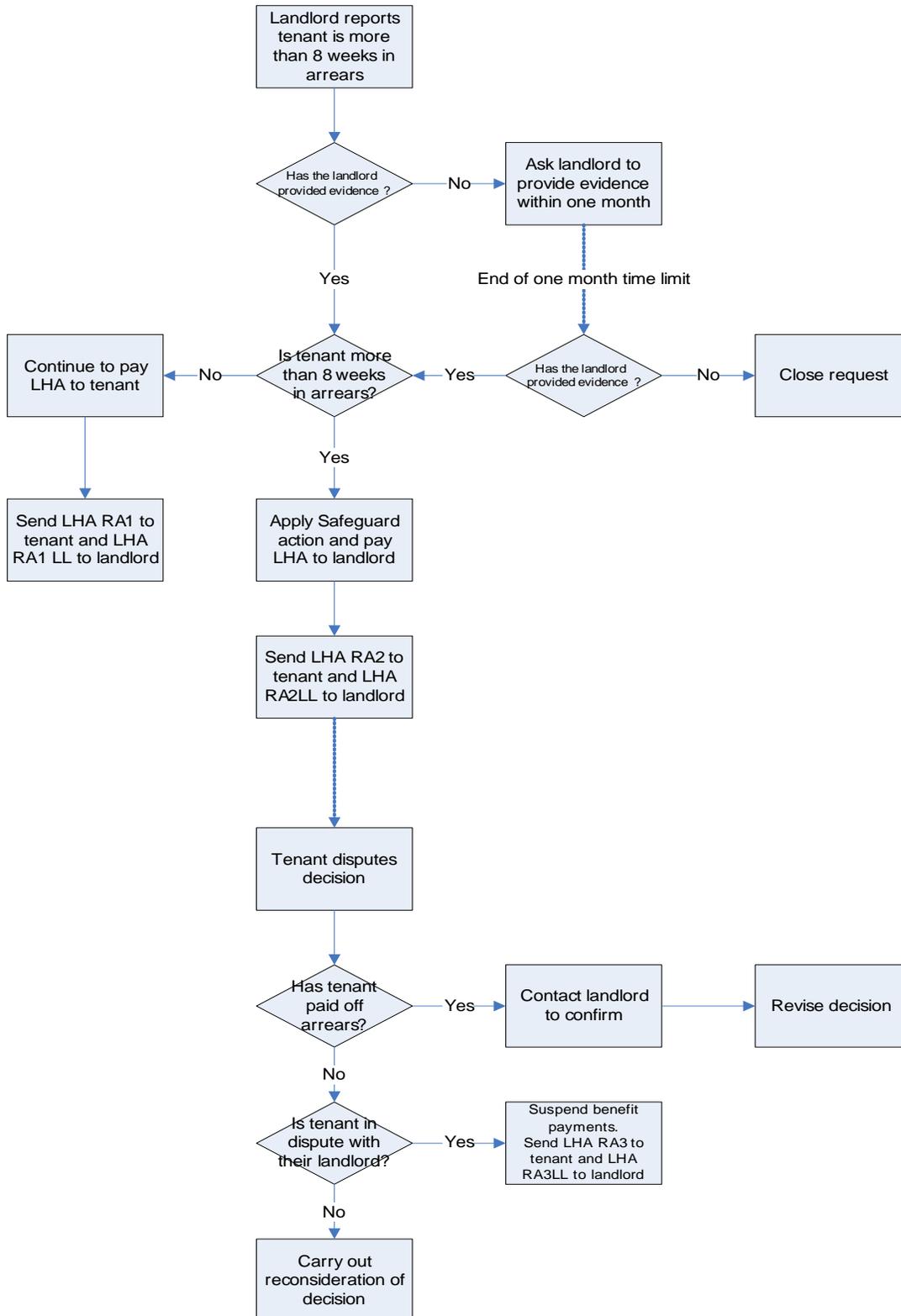
If a tenant is experiencing debt problems and is making payment to non-priority creditors rather than prioritising their rent, we will recommend the tenant seek advice from an appropriate advice agency.

Refusal to Pay

Where a tenant has said they will not pay their rent, we will consider the following factors before making a decision:

- Why they say they will not pay their rent
- Whether they have paid rent in the past to the same landlord
- How they would pay their rent if they were working
- Whether rent arrears have built up and what action the landlord or tenant has taken
- Whether helping the tenant to set up a standing order would help
- Whether the landlord has exerted pressure on the tenant
- Whether other tenants renting from the same landlord have made similar representations

5 Appendix A: Decision Making Process for Tenants more than 8 Weeks in Arrears with Rent



6 Appendix B: Vulnerability and Evidence

Vulnerability criteria	Written evidence required
Learning disability	GP Social Services Care workers DWP
Medical conditions	GP Social Services Care workers Hospital consultant DWP Support organisations
Leaving prison	Social Services Probation Service Support organisations
Fleeing domestic violence	GP Care worker Social Services Police
Impaired Literacy	Support organisations (to confirm arrears / debts have occurred as a result of not understanding correspondence)
An inability to speak English	
Addiction problems	GP Social Services Hospital consultant Police Care workers Support organisations
Severe debt problems	County Court judgements Banks and building societies Solicitors Creditors Support organisations DWP (deductions from benefit to pay utility bills)
Undischarged bankruptcy	Court order documents
Inability to open a bank account	Banks and building societies Money advice / Welfare organisations
Tenant is getting Supporting People help	Support Organisation Social Services Supporting People team
Tenant has a history of homelessness	Homeless charity Housing Advice Team Welfare agency Big Issue