

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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HB/CTB A26/2009

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For information
SUBJECT	Amendment to the Local Housing Allowance Guidance

Guidance Manual

The information in this circular does not affect the content of the HB/CTB Guidance Manual.

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/>
- have any queries about the
 - **technical content of this circular**, contact Eugene Okonkwo
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Local Housing Allowance safeguards

Introduction

- 1 A number of organisations, including Landlords Associations, Shelter, CRISIS, and some local authorities (LAs) have raised concerns about inconsistencies in the way in which the Local Housing Allowance (LHA) safeguards are administered across and within LAs. To ensure that our guidance supports LAs in their decision making processes we have reviewed Chapters 4, 5 and 6 of the LHA Guidance Manual. We have made revisions so that the guidance is clearer on when Housing Benefit (HB) can be paid direct to landlords and have provided more information on the sources of evidence which can be used when deciding whether the safeguards apply.
- 2 The policy intention remains the same. Under the LHA arrangements HB is paid to the tenant in most cases. However, LAs should have clear arrangements in place to consider direct payment of benefit to the landlord where there is good reason, based on existing or new information, to decide that the customer may not be able or likely to pay their rent. Each case should be dealt with on its merits and LAs should not set local targets limiting the proportion of cases with direct payments to landlords.
- 3 The purpose of this circular is to remind you of the safeguards contained within the LHA arrangements and to highlight the amendments that have been made to the LHA Guidance Manual.
- 4 Hard copies of the amendments should be with you by the end of December. We are also planning to take forward further work in the New Year to establish and disseminate good practice on the operation of the safeguards.

Background to the LHA safeguards

- 5 Under the LHA arrangements, benefit is paid to the tenant rather than the landlord in most circumstances. However, as in all HB rent allowance cases, payment will always be made to the landlord when
 - deductions are being made from DWP administered benefits such as Income Support (IS) or Jobseeker's Allowance (JSA) in respect of rent arrears, or
 - there are rent arrears of eight weeks or moreunless it is in the overriding interests of the claimant not to do so (see *HB/CTB Guidance Manual, A6.195-212*)

HB Reg 95(1) (a) and (b)

- 6 In addition, comprehensive safeguards are in place to protect landlords and to stop customers who cannot manage their own rent payments from falling into unmanageable difficulties. The safeguards enable local authorities to make payment to the landlord if
- they consider that the tenant is likely to have difficulty managing their financial affairs. For example, if the tenant is known to have a learning disorder or a drug/alcohol problem that would mean they are likely to have difficulty handling a budget
HB Reg 96(3A)(b)(i)
 - it is improbable that the claimant will pay their rent. For example, if the LA is aware that the tenant has consistently failed to pay the rent on past occasions without good reason
HB Reg 96(3A)(b)(ii)
 - a direct payment has previously been made under regulation 95 in respect of a current award of HB
HB Reg 96(3A)(b)(iii)
- 7 The evidence gathering process should begin as soon as there is reason to believe that the safeguards may apply. As this process may take some time consideration should always be given to making payment to the landlord for up to eight weeks until the decision is reached.
- 8 A date should be set within twelve months to review a decision to pay direct to the landlord.
- 9 The claimant, the landlord and any person affected by the outcome of a decision regarding direct payment should be sent written notification of the decision and rights of appeal against that decision.

Changes to the LHA guidance

- 10 Chapter 4 of the LHA guidance has been extended to
- include guidance on the application of the eight week arrears rule (see para 12 below)
 - remind LAs that the first instrument of payment on a new claim or following a change of circumstances can be made payable to the landlord but sent to the customer

- 11 Chapters 5 and 6 of the guidance have been amended to
- identify various bodies (ie Community Mental Health Teams, Leaving Care Team) as additional contacts from which to gather evidence when identifying whether a person is unlikely to pay or will have difficulty in paying their rent
 - emphasise that where a person obtains a private tenancy with assistance from a local housing authority (an LA assisted tenancy), this will often be reliable evidence that a person has had difficulties managing their rent in the past and in many cases safeguarding is likely to be appropriate
 - remove repetition of the lists of people/bodies that can be approached for evidence to make referencing easier
 - include an additional paragraph to emphasise that payments can be made to the landlord for a maximum of eight weeks whilst an LA gathers evidence to make a decision about payment direct to the customer's landlord
 - stress that there is no requirement for a customer to reach eight weeks' rent arrears before a LA can make direct payments to the landlord under the safeguard provisions

The eight week rule

- 12 The LA must pay HB to the landlord where the tenant is in arrears by an amount equivalent to eight weeks' rent unless it is in the overriding interest of the tenant not to make direct payment to the landlord.

(HB regulation 95(1)(b))

- 13 There is no definition in regulations as to how the eight weeks' arrears should be calculated but we included a note in the original LHA guidance to the effect that the *'DWP takes the view that a person cannot be in arrears in respect of a period that has not yet been served.'*

- 14 In a recent appeal tribunal (Doncaster v Coventry City Council, First Tier Tribunal 032/09/00932, 5 October 2009) the Chairman expressed the view that *'Rent is in arrears once the contractual date for payment has passed irrespective of whether rent is due in advance or in arrear'*. A number of you have asked us to clarify the Department's position.

- 15 The intention behind HB regulation 95(1)(b) is to provide landlords with the security of direct payment as an alternative to seeking possession on a mandatory ground and so avoid a situation arising where a tenant is evicted under Housing legislation. In view of this, we have consulted with lawyers at Communities and Local Government to establish at what point they consider a tenant to be in arrears of eight weeks. As they are also of the view that rent is in arrears once the date for payment has passed without any payment being made, we have revised the LHA guidance so that it is consistent with this position.

Contact for further enquiries

- 16 Any enquiries on the content of this circular or the LHA Guidance Manual should be addressed to Eugene Okonkwo, email Eugene.okonkwo@dwp.gsi.gov.uk