



Housing Benefit Local Housing Allowance (LHA) Safeguard Policy

Protecting the interests of tenants and landlords

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1.0 Glossary / Terminology

In this policy:

“Appointee” means a person appointed by us to deal with a claimant’s affairs.

“Claimant” means a person claiming Housing Benefit.

“Fit and proper” means the test contained in law that prevents certain landlords from receiving Housing Benefit payments because of impropriety.

“HB(LHA)” means Housing Benefit (Local Housing Allowance), i.e. Housing Benefit based on the Local Housing Allowance rules.

“Landlord” means the person or organisation to which the Housing Benefit claimant must pay their rent.

“LHA” means Local Housing Allowance – the way maximum rent is calculated for most private tenants since 7th April 2008.

“Payment to landlord” means a payment of Housing Benefit made to the landlord and not the claimant.

“Registered Housing Association” means a Housing Association which is registered in a register maintained by the Housing Corporation under chapter 1 of Part 1 of the Housing Act 1996.

“Safeguard grounds” means a reason, other than rent arrears, on which Haringey Council agrees that ‘payment to landlord’ is appropriate.

“Supporting People” means a Social Services team that receives government funding to provide housing-related support to help vulnerable people live independent lives.

“The Valuation Office Agency” is an executive agency of the HM Revenues and Customs Department for Work and Pensions who make independent rental valuations for Housing Benefit purposes

“Her Majesty’s Courts and Tribunal Service” is an executive agency of the Ministry of Justice (MoJ) who have the legal power to hear appeals against Housing Benefit decisions.

“We” means Haringey Council.

2.0 Introduction

- 2.1. Since 7th April 2008, the Housing Benefit rules changed so that most private tenants who claim Housing Benefit from that date will:
- Have their entitlement based on a “Local Housing Allowance” (LHA). This is a rate set by The Valuation Office Agency based on the size of the claimant’s household and the area in which they live.
 - Have their benefit paid directly to themselves – not their landlord – except in prescribed circumstances.
- 2.2. It is common to hear of people “receiving LHA” or “claiming LHA”. This is not strictly correct. The “Local Housing Allowance” is a method of calculating and paying Housing Benefit – it is not the name of the Benefit itself. This policy refers to “HB(LHA)” – i.e. Housing Benefit subject to the Local Housing Allowance rules.

3.0 Who does this policy apply to?

- 3.1. The HB(LHA) rules and this policy apply to Housing Benefit claimants who rent in the private deregulated sector and who:
- ✓ Claim Housing Benefit on or after 7th April 2008, or
 - ✓ Move to a different address on or after 7th April 2008, or
 - ✓ Have a break in their claim (i.e. someone whose claim ends but then claims again at a later date)

The HB(LHA) rules and this policy **do not** apply to claimants who:

- ✗ Have a regulated tenancy or a rent registered with The Valuation Office Agency (normally where the agreement was entered into before 15th January 1989)
- ✗ Rent from Haringey Council
- ✗ Rent from a registered Housing Association
- ✗ Live in houseboats, mobile homes or caravans
- ✗ Have a substantial part of their rent attributable to ‘board and attendance’.
- ✗ Rent from a charitable or voluntary organisation who provide ‘care, support or supervision’ that is more than minimal

- * Have been receiving Housing Benefit continuously for the same address since 6th April 2008

These people will receive Housing Benefit based on the pre-LHA rules. This means that they retain the right to request that payments be made to their landlord. We will not normally refuse except in certain cases where the landlord is deemed to be “not fit and proper”.

4.0 Aims and objectives of this policy

- 4.1. Most claimants are capable of managing their financial affairs. We will assume that our claimants can and will pay their rent unless there is evidence to the contrary. Within the framework established by law, this policy is designed to:
- ✓ Provide a safeguard for claimants who may have difficulty managing their affairs
 - ✓ Reassure claimants that HB(LHA) and rent will be paid
 - ✓ Reassure landlords who provide specialist accommodation services that HB(LHA) and rent will be paid
 - ✓ Prevent rent arrears and the risk of eviction
 - ✓ Help sustain tenancies
 - ✓ Help claimants take responsibility for receiving HB(LHA), where appropriate
 - ✓ Help to put claimants in touch with other agencies who can offer support in managing financial affairs
 - ✓ Work with landlords where the claimant consistently fails to pay their rent
 - ✓ Make reasonable, fair and consistent decisions
 - ✓ Promote a transparent and simple process that is widely understood
 - ✓ Treat each case individually and not make assumptions about our claimant’s situations

This policy is not intended to:

- * Supersede support being received by our claimants to help them become responsible for their own income and expenditure
- * Be used by landlords to circumvent the aims of HB(LHA)
- * Be a blanket policy for agencies providing support to private tenants

5.0 Who should receive HB(LHA) payments? What the law says

- 5.1. The law says that HB(LHA) must normally be paid directly to:
- the claimant, or
 - the claimant’s appointee (if they are unable to act for themselves), or
 - a person aged 18 or more (or organisation) nominated by the claimant (but this does not include the landlord or the landlord’s agent).
- 5.2. From 1 April 2011 there are 3 circumstances when the landlord may receive the payments instead (i.e. we can choose whether to pay the landlord):

✓ When we consider that the claimant is likely to have difficulty managing their financial affairs.	See section 6.0
✓ When we consider that it is improbable that the claimant will pay their rent.	See section 7.0

If we are considering whether either of the above circumstances apply we can pay HB(LHA) to a landlord whilst we investigate whether continuing to do so is appropriate. But we can only do this for up to 8 weeks.

✓ As from 1 April 2011 - When we consider that it will assist the claimant in securing or retaining a tenancy.	See section 8.0
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- 5.3. There are also 2 circumstances where the landlord must receive the payments instead:

✓ When the claimant is in rent arrears of an amount equivalent to 8 weeks or more – except when it is in the “overriding interest” of the claimant not to pay the landlord.	See section 9.0
✓ Where deductions are being made from the claimant’s Income Support, Jobseeker’s Allowance, ESA or Pension Credit to pay rent arrears to the landlord.	See section 10.0

6.0 Claimants who have difficulty managing their financial affairs

6.1. If a claimant has, or will have, difficulty managing their financial affairs we will consider paying their HB(LHA) to their landlord on 'safeguard grounds'. The safeguard grounds we will consider include:

- ✓ Claimants who are unable to open a bank or building society account (i.e. people who have been refused an account because of their financial standing)
- ✓ Claimants with severe debt problems or recent County Court Judgements
- ✓ Claimants who are undischarged bankrupts
- ✓ Claimants who get help from Supporting People
- ✓ Claimants who get help from a homeless charity
- ✓ Claimants with learning disabilities
- ✓ Claimants with mental illnesses that seriously impair their ability to manage on a day to day basis (e.g. schizophrenia, depression, age related mental deterioration such as the early stages of Alzheimer's disease or senile dementia)
- ✓ Claimants with physical disabilities who are housebound
- ✓ Claimants who are illiterate
- ✓ Claimants who cannot speak English
- ✓ Claimants with an addiction to drugs, alcohol or gambling
- ✓ Claimants who are fleeing domestic violence
- ✓ Claimants who have just left prison
- ✓ Claimants who are recent care leavers
- ✓ Claimants in 'priority need' of accommodation because they have been deemed 'vulnerable' by Haringey's Private Sector Leasing Team.

This list is not exhaustive. We will consider other circumstances in which the claimant may have difficulty managing their financial affairs. Please see section 11.0 for details of the information and evidence we will ask to see.

6.2. We will not pay HB(LHA) to a landlord on safeguard grounds if:

- ✗ This would over-ride support being given to the claimant to help them manage their own affairs.
- ✗ Someone who has been appointed to act on behalf of the claimant is 'unable for the time being to act'.
- ✗ It is the landlord who is the person likely to have difficulty managing their affairs (e.g. the landlord cannot leave home to collect the rent).
- ✗ The landlord is considered to be 'not fit and proper' (except when it is still in the best interests of the claimant to do so).

7.0 Claimants who will probably not pay their rent

7.1. If a claimant is unlikely to pay their rent we will consider paying their HB(LHA) to their landlord on the same 'safeguard grounds' as those with difficulty managing their financial affairs (see section 6.0). We will also consider the following circumstances:

- ✓ Claimants with a proven and sustained history of rent arrears
- ✓ Claimants who have previously absconded from a property leaving significant rent arrears

7.2. We will not consider paying HB(LHA) to a landlord when:

- ✗ A claimant states that they will 'not pay their rent' purely because they would prefer not to take responsibility.
- ✗ The landlord is considered to be 'not fit and proper' (except when it is still in the best interests of the claimant to do so). See section 15.0 for more about this.

7.3. If we are told that the claimant is unlikely to pay their rent we will investigate this. Whilst we do so we may suspend HB(LHA) payments. We may also pay the landlord for up to 8 weeks (see 5.2) or pay the claimant.

8.0 Claimants who have secured or retained a tenancy because of direct payments to the Landlord from the 1st April 2011

8.1. If a claimant has secured or retained a tenancy because of direct payments to the Landlord we can pay HB to the landlord on 'safeguard grounds'.

Safeguard regulations 96(3A) has been amended by central government to try and help reduce rents for HB customers because of the new way LHA rates are calculated from the 1st April 2011. The changes will mean that

some customers will have a shortfall between their contractual rents and their HB entitlement.

- 8.2. The direct payment to the Landlord safeguard option may be a negotiation tool for the claimants or relevant specialist teams (i.e. Housing Advice) to help negotiate a lower rent in return for direct payments. For example, reducing the contractual rent could help the claimant **retain** their tenancy.

Note:	<p>The DWP have advised that for a tenancy to be retained or secured it should be affordable. However they have not written this in the regulations. Therefore we do not need to adhere strictly to this advice as it is only guidance.</p> <p>Because of this we will not apply any specific guidance on how to determine whether a rent is affordable to the customer. We will only except that a claimant cannot afford the rent if they request extra help for their rent by requesting a DHP and therefore may not be able to retain or secure their tenancy as a result (other safeguard grounds may apply). This will need to be considered in line with DHP guidance and on an individual basis.</p>
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- 8.3. The safeguard grounds we will consider are:

- ✓ The claimant would not have secured the tenancy without direct payment of HB(LHA) to their landlord.
- ✓ The claimant would not be able to retain their tenancy if direct payment to the landlord was not made.
- ✓ The landlord has accepted a reduction in the contractual rent in return for direct payments.

- 8.4. We will not consider paying HB (LHA) to the landlord on safeguard grounds if:

- ✗ The landlord has not genuinely reduced the contractual rent.
- ✗ The claimant requests direct payment to the landlord as a matter of routine but they are not securing a new tenancy, re-negotiating their rent or retaining an existing tenancy.

9.0 Claimants who have rent arrears equivalent to 8 weeks or more

- 9.1. If a claimant has rent arrears equivalent to 8 weeks or more we will pay their HB(LHA) to their landlord except when it is in the 'overriding interest' of the claimant not to do so.

Examples of 'overriding interest' may include:

- ✓ Landlords who are not fit and proper. See section 15.0 for more about this.

- ✓ Claimants who have been advised to withhold their rent by a legally trained advisor because they have exercised the right to carry out their own repairs. (This is very rare. Our benefits staff never advise our claimants to withhold rent under any circumstances).

This is not an exhaustive list. In any other circumstances where it is in the claimant's "overriding interest" not to pay the landlord we will not do so.

- 9.2. Arrears are "equivalent to 8 weeks or more" when the amount the claimant owes as rent is at least 8 times the weekly rent. This could accrue over 8 full weeks of non-payment or over a longer period where some, but not all the rent due, is paid.

- 9.3. Rent is in arrears once the date it is due to be paid has passed, regardless of whether it is due to be paid in advance or in arrears. (Clarification of the definition of 8 weeks rent arrears can be found in Adjudication circular HB/CTB A26/2009.)

Example:

Sally's rent is due 4 weekly in advance. Sally pays her rent on the 1/1/ 2011. This covers her rent for the period 1/1/ 2011 – 29/1/ 2011 because her rent is due 4 weekly in advance. Her rent is due again on the 30/1/2011 and she fails to pay her landlord.

Sally's landlord contacts us on the 28/2/2011. He tells us that Sally is in 8 weeks rent arrears.

Sally's rent is paid up until the 29/1/2011. Sally's rent is due to the Landlord for the period:

30/1/2011 to 26/2/2011 (due on the 30/1/2011)

26/2/2011 to 26/3/2011 (due on the 26/2/2011).

Because Sally's rent is due 4 weeks in advance she is in 8 weeks arrears and a direct payment to the Landlord should be made.

10.0	Deductions being made from Income Support Jobseeker's allowance Pension Credit to pay rent arrears to the landlord
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- 10.1. Some landlords receive rent arrears payments directly from the Department for Work and Pensions because a sum is being deducted from their tenant's Income Support, Jobseeker's Allowance, ESA or Pension Credit (does ESA need to be added?).

- 10.2. A landlord who is receiving rent arrears in this way will also have the Housing Benefit payments for that tenant made directly to them – provided that they are 'fit and proper' (see section 15.0).

- 10.3. We can only make 'payment to landlord' in these cases when the rent arrears deductions are brought to our attention. We will ask to see proof from the Department for Work and Pensions.

11.0 How to request 'payment to landlord'

- 11.1. We will consider all requests to pay HB(LHA) to a landlord that come from the claimant, the claimant's representative or the landlord.
- 11.2. In some cases we will decide to consider 'payment to landlord' without any representation where we think it is in the best interests of the claimant to do so.
- 11.3. We will accept requests for 'payment to landlord' by:
- ✓ Post to: Benefits and Local Taxation, PO Box 10505, Wood Green, London, N22 7WJ
 - ✓ Tel to: 020 8489 2800
 - ✓ Email to: benefits@haringey.gov.uk
 - ✓ Visit to one of our Customer Service Centres
 - ✓ In our application form
11. The claimant is likely to agree to direct payment to their landlord if the alternative is losing their tenancy or not being able to secure a new tenancy. If the claimant is against direct payment to the landlord it is for us to make a decision in their best interest. In these cases you must make the normal consideration on whether the landlord is fit and proper.
- 11.5. We welcome telephone enquiries about 'payment to landlord', but any request to make payments in this way must be in writing.

12.0 How we deal with requests for 'payment to landlord'

- 12.1. The way we will deal with requests for 'payment to landlord' will depend on why 'payment to landlord' is being requested and the amount of information and evidence available.
- 12.2. Any request for 'payment to landlord' should be accompanied by as much supporting information and evidence as possible. This makes it quicker and easier for us to make a decision.
- 12.3. The types of information and evidence we will ask to see are as follows:

Safeguard grounds'	Examples of information and evidence required
Claimants who are unable to open a bank or building society account	Letters from banks, building societies and credit unions Letters from debt/money advisors
Claimants with severe debt problems or recent County Court Judgements	Letters from banks, building societies and credit unions Letters from debt/money advisors or solicitors Copy of court order
Claimants who are undischarged bankrupts	Copy of court order
Claimants who get help from Supporting People	Written evidence from Social Services
Claimants who get help from a homeless charity	Written evidence from the charity
Claimants with learning disabilities	Written evidence from care workers, GP's, other qualified medical practitioners, Social Services, government departments, etc
Claimants with mental illnesses that seriously impair their ability to manage on a day to day basis (e.g. schizophrenia, depression, age related mental deterioration such as the early stages of Alzheimer's disease or senile dementia)	Written evidence from care workers, GP's, other qualified medical practitioners, Social Services, government departments, etc
Claimants with physical disabilities who are housebound	Written evidence from care workers, GP's, other qualified medical practitioners, Social Services, government departments, etc
Claimants who have secured a tenancy with direct payment	Written confirmation from Landlord, Claimant, Housing Advice or homelessness support agencies.
Claimants who have to retain a tenancy with direct payment	Written confirmation from Landlord, Claimant, Housing Advice or homelessness support agencies.
Claimants who are illiterate	Written evidence from support organisations
Claimants who cannot speak English	Written evidence from support organisations
Claimants with an addiction to drugs, alcohol or gambling	Written evidence from care workers, GP's, support organisations, government departments, etc
Claimants who are fleeing domestic violence	Written evidence from women's refuges, support organisations, care workers, Social Services, etc

Claimants who have just left prison following a long sentence	Written evidence from The Probation Service
Claimants who are recent care leavers	Written evidence from care workers, Social Services, support organisations, etc

Non-payment of rent cases	Examples of information and evidence required
Claimants who are in rent arrears equivalent to 8 weeks or more	Written evidence from the landlord regarding the level of rent arrears. Evidence of missed payments (where available)
Deductions are being made from the claimant's Income Support, Jobseeker's Allowance, ESA or Pension Credit to pay rent arrears to the landlord.	Letter from the DWP to the claimant or landlord showing the deductions being made

The lists above are not exhaustive. We will accept written information and evidence from other sources.

- 12.4. The inability of a claimant to provide information and evidence may itself be an example of the difficulty they have in managing their affairs. Where evidence is limited, refused or not available we will still consider whether 'payment to landlord' is appropriate.

13.0 How we notify our decisions

- 13.1. When we are asked to consider 'payment to landlord' we will make our decision as soon as we can. We may need to seek further information and evidence which can delay our decision.
- 13.2. If we decide to pay HB(LHA) to the landlord the letter should include.
- The decision to pay the landlord
 - The reasons for the decision
 - If and when the decision will be reviewed
 - The right to appeal the decision
 - Any advice agencies, voluntary or statutory organisations that may be able to help them.

If the amount of the HB(LHA) award is more than the contractual rent the law says we must pay this extra amount to the claimant – except where it can be paid to the landlord to repay rent arrears. Where relevant, our decision letter will explain this. The excess payments will end for all new claims or a change of address from 1 April 2011. Claimant currently in

receipt of an excess payment will continue to receive it until their LHA anniversary date or a change in their circumstances that change the Category of Dwelling.

We will also write to the landlord to notify:

- The decision that HB(LHA) up to the amount of the contractual rent will be paid to them
- The reasons for the decision
- If and when the decision will be reviewed
- The right to appeal the decision

13.3. **If we decide to pay HB(LHA) to the claimant**

If we decide to pay the claimant we will write to them and their representative to notify:

- The decision to pay them and not the landlord
- The reasons for the decision
- The right to appeal the decision
- Any advice agencies, voluntary or statutory organisations that may be able to help them.

We will also write to the landlord to notify:

- The decision that HB(LHA) will be paid to their tenant and not themselves
- The reasons for the decision
- The right to appeal the decision

14.0 Disputing a 'payment to landlord' decision

14.1. If the claimant or landlord disagrees with our decision about whom to make payments of HB(LHA) to, they can:

- Ask for a 'statement of reasons' for the decision, or
- Ask us to look at the decision again, or
- Appeal against the decision

14.2. The right of appeal applies to the claimant and landlord. Appeals cannot be accepted from anyone else.

14.3. Appeals can only be made in writing and must be signed by the claimant or landlord.

- 14.4. Appeals must normally be made within one month of the decision.
- 14.5. If we receive an appeal we will look at our decision again. If we do not change our decision the appeal will be passed to Her Majesty's Courts and Tribunals Service.
- 14.6. Every 'payment to landlord' decision will explain these dispute rights and give the address for relevant correspondence.

15.0 Reviewing a decision to pay the landlord

- 15.1. When we decide to pay HB(LHA) to a landlord we will review this decision at certain intervals.
- 15.2. A decision to pay the claimant and not the landlord will not be subject to review except when the decision is disputed (see section 13.0).
- 15.3. When we review a 'payment to landlord' decision we may need to write to the claimant, their representative, landlord or other persons or organisations for assistance. We will seek to confirm whether the circumstances that led to 'payment to landlord' still apply, or whether there are new circumstances that require consideration.
- 15.4. The review will decide whether 'payment to landlord' should continue or whether to now pay HB(LHA) to the claimant instead.
- 15.5. The frequency of review will be decided by us based on the likelihood that circumstances may have changed. Normally, a review will be conducted no more than 12 months later than the original decision. Many reviews will be conducted before this.
- 15.6. Where 'payment to landlord' is being made because of 8 weeks rent arrears we will estimate how long it will take to pay these arrears off in deciding when the 'payment to landlord' decision should be reviewed.
- 15.7. If we decide to make further payments of HB(LHA) to the claimant we will notify the claimant and landlord of this decision, and the right to appeal against it.

16.0 Landlords who are not 'fit and proper'

- 16.1. Most landlords act responsibly, but some do not. The law says that we do not have to make Housing Benefit payments to a landlord who is not a 'fit and proper person'.
- 16.2. Landlords who have been involved in serious financial impropriety will be deemed 'not fit and proper'. This includes, but is not restricted to:
- Landlords who have committed, assisted or failed to report Housing Benefit fraud.

- Landlords who have knowingly failed to report a change of circumstances that would affect Housing Benefit.
- 16.3. We will normally refuse to pay Housing Benefit to a landlord who is deemed 'not fit and proper' – even if we accept that the claimant has rent arrears of 8 weeks arrears or more or may have difficulty managing their finances.
- 16.4. If it is clearly in the best interests of the claimant and their family to pay Housing Benefit to their landlord, we may do so even if the landlord is deemed to be 'not fit and proper'.

17.0 Making the 'first payment' to a landlord

- 17.1. The law says that when we receive a new claim for Housing Benefit we can choose to make a 'first payment' of Housing Benefit to the landlord and then all further payments directly to the claimant. But there are certain strict conditions attached to this:
- The period covered by the 'first payment' should be one for which the claimant has not already discharged their liability for rent.
 - It would be "in the efficient administration of Housing Benefit" to make the first payment in this way.
- 17.2. None of the other circumstances in this policy need apply for us to make a 'first payment' to a landlord.
- 17.3. The circumstances in which we will consider making a 'first payment' to a landlord include, but are not restricted to:
- ✓ Claimants who have already moved out and still owe rent
 - ✓ Claimants who have a history of non-payment of rent