

# **safeguarding policy**

## **local housing allowance**

updated July 2011



Working in  
partnership with

**LIBERATA**

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### **Version control**

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## **1 Background**

The purpose of this policy is to define when a customer who falls under the Local Housing Allowance Scheme (LHA) should have their LHA payments made directly to their landlord. The LHA scheme has been designed to engender social inclusion and financial responsibility amongst housing benefit claimants by having any payments made directly to them rather than their landlord.

However, in some circumstances it will be more appropriate to pay the LHA direct to the landlord.

These circumstances will be where the customer is:

- in rent arrears of 8 weeks+
- unlikely to pay their rent (won't pay)
- vulnerable (unable to manage their financial affairs and so can't pay)
- in some cases where the customer does not have a bank account

## **2 Definitions**

The following definitions are intended as policy guidance for the making of decisions around whether to pay the claimant or the landlord. More details can be found in section 3 'Process Map'

### **2.1 In Rent Arrears 8 weeks+**

The regulations specify that the local authority must make a direct payment of LHA to the landlord where the tenant is in rent arrears of an amount equivalent to 8 weeks rent liability, or an amount of Income Support or JSA is being paid direct to the landlord. This is qualified by having to be in the overriding interest of the claimant.

If it is not in the overriding interest of the claimant to make payments direct to landlord, even though there are rent arrears exceeding an amount equivalent to 8 weeks rent, then the authority can choose to continue to pay the claimant.

For the purposes of this policy, 'rent arrears' as a reason for making direct payments means that the customer is in arrears of an amount equivalent to 8 weeks rental liability or they are having deductions from their JSA.

Verification and evidence of arrears where appropriate will be required from a landlord to enable this to be considered. In such circumstance tenants will be contacted and given the opportunity to challenge within 14 days.

This is prescribed by regulation 95(1) and is appealable by landlord or claimant. The whole of the LHA payment can be used to pay arrears of rent, including the excess. More details are contained in the procedure.

### **2.2 Unlikely to pay their rent (won't pay)**

A tenant will be deemed as unlikely to pay their rent when there has been an indication that they have failed to previously pay their rent, at the point of making a decision on a new claim,

or it is brought to the attention of the LA by the landlord or tenant at a later point.

This definition of unlikely to pay is directed specifically at tenants who have failed to pay their rent because they simply wanted to spend the money on something else, and who do not have any issues that would place them in the 'vulnerable' category.

This is permitted by regulation 96(2) and is appealable by landlord or tenant. If a customer is deemed 'unlikely to pay their rent' then they may make representations on the LA to review this.

This decision can be reviewed where the customer makes a signed, written statement that they will pay their rent to the landlord, and they have cleared any current arrears.

After any review of this nature, if direct payment is subsequently made to the landlord on the grounds of 'rent arrears' then any further representation by the customer to have payments made to them should be refused unless there are exceptional circumstances.

Where the LHA amount is higher than the rent, any excess should still be paid to the tenant even where direct payment is being made to the landlord under the 'unlikely to pay' reason unless there are rent arrears. More details are contained in the procedure.

### **2.3 Vulnerable (unable to manage their financial affairs – can't pay)**

This category can cover a wide range of circumstances, ranging from an inability to open a bank account, having no means to pay the rent money to their landlord, to having medical or social conditions that would mean that they should be considered unsuitable to receive direct payments of LHA.

This is permitted by regulation 96(2) and is appealable by landlord or tenant. Circumstances under which a customer may be classed as 'vulnerable' are:

- Un-discharged bankrupt
- Addiction to alcohol, drugs or gambling
- Having a medical or social condition that means they are unable to manage finances
- Having existing severe debt problems
- Having severe problems in making payments of rent to their landlord
- Having recently arrived in the UK and not speaking English
- Receiving support due to being a care leaver under 21

In most cases it will not be apparent at the point of making a decision on a claim that the claimant has any vulnerability issues.

It will be necessary, in most cases, to seek supporting documentation to enable a decision to be made on whether a claimant should be treated as 'vulnerable' and direct payment made to the landlord.

Due to the nature of this decision it should only be made by designated officers. This will mean that the decision should be routed to them and treated as a priority. Additionally, it may be deemed necessary to visit or arrange an office or telephone interview with the tenant to establish the facts.

Unless it is absolutely clear at the point of the representation that the vulnerability issue is unfounded, the claim should be temporarily suspended in order to gather enough evidence and information to make a decision on who the correct payee should be.

Once the vulnerability issue is resolved the payment can be reverted to the claimant if appropriate.

Customers who are deemed as vulnerable, but who may not be classed as such with a little help should be offered this help and advised to get back in touch if they are able to resolve the issue that caused the vulnerability.

This help should be restricted to offering information and advice of a basic financial or social nature: i.e. where to open a bank account, where to get debt advice, how to contact social services, how to contact the Citizens Advice Bureau or welfare advice.

Consideration will be given to amending the frequency of benefit payments if this will have a significant impact on the customer's ability to manage their financial affairs.

Where the LHA amount is higher than the rent, any excess should still be paid to the tenant even where direct payment is being made to the landlord under the 'vulnerable' reason.

## **2.4 No bank account**

This circumstance should not automatically categorise the customer as 'vulnerable', as it may be a temporary issue that can be resolved.

Where a customer indicates on the claim form that they have no bank account then a decision to pay the landlord can be made under reg 96(2) unless the customer has already paid their rent, or wants to be paid direct. More details in the procedure.

The customer should be given information and advice on opening a bank account and how the Weston Credit Union can assist them. They will also be advised to contact the LA again when they have opened one, in order for the decision to pay direct to be revised.

## **2.5 Payment to keep a claimant in a property from April 2011**

From April 2011 regulations have been changed to permit payment direct to a landlord for individual cases where direct payment would be in exchange for the rent at the property being reduced to the appropriate 30<sup>th</sup> percentile LHA level for that property and maintained at or close to that level for the duration of the direct payment period.

The landlord would also need to demonstrate that other housing related costs were not increased to compensate for the reduction in rent. This regulation is designed to assist a claimant who might otherwise have difficulty in obtaining or maintaining a tenancy. If the rent is specifically reduced in order to comply with this requirement then a new tenancy agreement must be provided.

## **3 Process map**

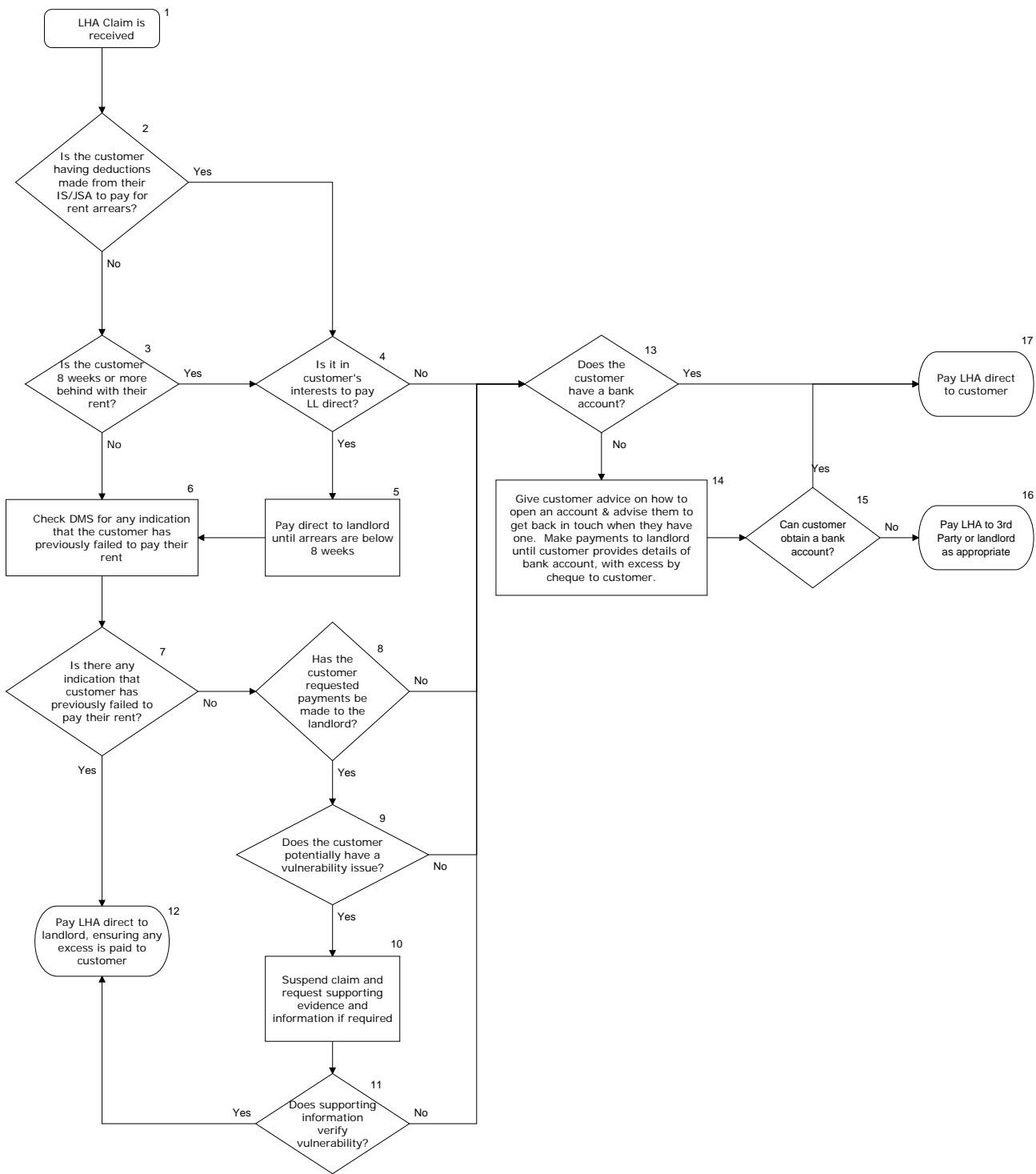
The process map under should be used to define whether payment should be made direct to the customer or a landlord.

The claimant can no longer choose to have payments made directly to the landlord. Payments can only be made direct to landlord if the claimant falls within the specific reasons in the safeguard policy.

This map can be used for the purpose of initially making a decision, or for the purposes of making a decision once the claim is already in payment. Where the claim is already in payment you would start the process at the appropriate point on the map.

For example:

- landlord writes in to say customer is in rent arrears, start the process at step 3
- passported vulnerability status, customer writes in or landlord writes in to say there may be vulnerability issues, start the process at point 9.



## **Procedure:**

### **1. LHA claim is received**

This will be on a claim form that includes questions that will identify issues that will enable a safeguard decision to be made

Go to point 2

### **2. Is the customer having deductions from their IS/JSA to pay for rent arrears?**

This is to enable you to make a decision whether any LHA should be paid direct to the landlord under the requirements of Regulation 96.

No: Go to point 3

Yes: Go to point 4

### **3. Is the customer 8 weeks or more behind with their rent?**

The purpose of this check is to decide whether the customer is in rent arrears by an amount equivalent to 8+ weeks gross rent. This is to enable you to make a decision whether any LHA should be paid direct to the landlord under the requirements of Regulation 96.

There is a section on the claim form that asks whether the customer is in rent arrears. However, at the time of making the application the customer may not be in arrears.

It may actually be any delay in processing the claim form benefit that gives rise to the rent arrears.

You should not assume that the customer would not have paid their rent even if it appears that they have no means to do so. You are not making a decision based around assumptions, only around evidence that is apparent at the time of processing the claim.

Yes: Go to point 4

No: Go to point 6

### **4. Is it in the customer's interests to pay landlord direct?**

This is a decision that has to be made in conjunction with the decision to pay a landlord because a customer is in rent arrears of an amount equivalent to eight weeks gross rent.

Generally speaking, where a customer is in eight weeks+ rent arrears the regulations say that you must pay the landlord direct. In most cases you will want to do this to ensure that LHA is used for the purpose intended and making a direct payment to the landlord safeguards the customer's tenancy.

The exception to this rule is where it is "not in the overriding interest of the customer" to do this.

In any circumstances where paying the landlord directly would jeopardise the customer's tenancy then you have the option of continuing to pay the customer even though they are in rent arrears by an amount of more than eight weeks or more.

This rule should be treated with extreme caution and only applied in very clear circumstances where the customer's tenancy would be in danger and you are satisfied that the customer would use the LHA payment to pay the rent.

The eight week period in this regulation is directly linked to the period of time under which a landlord can start eviction proceedings for rent arrears.

The regulations do not define 'overriding interest' and there are few examples in commissioner's decisions to support this premise.

Circumstances where this may be applicable are:

- customer has indicated that you should not contact the landlord
- customer is in dispute with the landlord over repairs or money owed from a bond, for example
- you are satisfied that the customer will not withhold rental payments from the landlord once the dispute is over

Yes: Go to point 5

No: Go to point 13

#### **5. Pay direct to landlord until arrears are below eight weeks.**

The whole of the LHA payment can be used to pay arrears of rent, including the excess.

Where a payment is being made direct to a landlord under this rule, it should be reviewed once the arrears are below eight weeks to check the rent arrears position.

If a decision is made to revert payment to the customer then the landlord should be notified of this decision.

Go to point 6.

#### **6. Check DMS for any indication that the customer has failed to pay their rent.**

Cross check appropriate records to establish if it is possible to determine if the customer has previously failed to pay their rent.

The purpose of this is to identify whether the customer is 'unlikely to pay' their rent.

If the customer has any history of rent arrears, has been evicted for non-payment of rent from any tenure of property or is listed on the 'non-payer' database, then you can treat them as 'unlikely to pay' for the purposes of this decision.

Go to point 7

#### **7. Is there any indication that the customer has previously failed to pay their rent?**

No: Go to point 8

Yes: Go to point 12

#### **8. Has the customer requested payments to be made to the landlord?**

Yes: Go to point 9

No: Go to point 13

#### **9. Does the customer potentially have a vulnerability issue?**

Pass ported confirmation received from an agreed party. A signed agreement will confirm the parties from which pass ported confirmation can be received.

This will be a check on DMS and a check on the claim form.

You are looking for any indication that the customer may have a vulnerability that will impact on their ability to manage their financial affairs.

You should take care to ensure that you do not confuse physical vulnerability with the ability to manage financial affairs.

Each case should be looked at individually and there may be some person for who it is easier to identify potential problems with managing financial affairs than others.

A person who would not be able to manage their financial affairs would be someone who may:

- have learning difficulties
- be an un-discharged bankrupt
- have debt problems
- have problems dealing with an addiction
- be unable to open a bank account
- have recently arrived in the UK and speak or understand little English

It should also be noted that any identification of vulnerability at this point does not mean that the customer may not be able to manage their own financial affairs at a later point. The council should try and support customers and give relevant advice to enable them to have financial inclusion as soon as possible.

Having an appointee does not mean that the customer should be treated as being unable to manage their financial affairs. In cases with an appointee, the appointee is acting on behalf of the customer and as such should be able to receive direct payments on their behalf.

Yes: Go to point 10

No: Go to point 13

## **10. Suspend claim and request supporting evidence and information if required.**

Where you have information and evidence that the customer may have vulnerability issues that affect their ability to manage their financial affairs then there is no need to suspend the claim. You can go straight to point 11.

Where you need evidence relating to potential vulnerability issues you should suspend the claim (if already in payment) and write out for the evidence.

The customer should be given a period of one month to provide the information.

If there is no response after this period then the customer should be paid direct as it effectively means that there is no evidence of vulnerability.

Go to point 11

## **11. Does supporting information and evidence verify vulnerability?**

Proof is required wherever a customer, landlord or advice agency contacts the authority to request a change in payee on the grounds of vulnerability.

There may be circumstances where no proof is available, and in these cases a decision should be made based on the available information.

There may be enough convincing information to enable a decision to be made without having further documentary evidence.

Where there is no documentary evidence for issues relating to anything other than rent arrears, then it may be appropriate for the customer to visit an advice centre and get them to validate the circumstances.

This advice centre validation should be used in the decision making process.

General document requirements to support vulnerability are below:

### **Rent arrears**

- signed statement from landlord supported by details of payments due/made/not made (refer to proforma)
- detailed rent book/rent account

### **Unlikely to pay**

Evidence and information showing that customer has failed to pay rent and is unlikely to pay if payments are made to them.

This will be based on information held on previous claims, or information from landlord.

Sporadic payments that do not enable direct payment to landlord under 'Rent Arrears' criteria may be indicative of a tenant being 'unlikely to pay'.

### **Vulnerable**

<b>Reason for Vulnerability</b>	<b>Type of evidence/information</b>	<b>Required?</b>
Addiction to drugs, alcohol, gambling	Letters from doctor /hospital	If available at no cost
	Letter from social/care worker	If available
	Letter from support organisation	Yes
	Interview with benefit service	Yes
Severe debt problems	Court order	If available
	Letter from solicitor/administrator	If available at no cost
	Letters from creditors/bank	If available at no cost

	Bank statements	Yes
	Interview with benefit service	Yes
	Interview with advice agency	Yes
Unable to open a bank account	Letter from bank or financial advisor	If available at no cost
	Interview with benefit service	Yes
	Letter from debt awareness officer	
	Interview with advice agency	Yes

Reason for Vulnerability	Type of evidence/information	Required?
Medical, social, learning or literacy conditions	Letter from doctor / hospital	If available at no cost
	Letter from social /care / support worker or support organisation	If available
	Written evidence from DWP	Yes
	Interview with benefit service	Yes
	Interview with advice agency	Yes

Yes: Go to point 12

No: Go to point 13

## 12. Pay LHA direct to landlord, ensuring any excess is paid to customer

You should not pay any more of the LHA to the landlord than the level of the rent (gross inclusive of any services). Any excess LHA over the rent level should be paid to the customer, by cheque, even where they do not have a bank account. This decision should be reviewed in 52 weeks or at the point when the LHA rate is changed, whichever is the earlier.

## 13. Does the customer have a bank account?

Part 12 and part 13 of the claim form enable the customer to give details of bank accounts. You should also check payslips and/or bank statements to see if the customer or partner is being paid by BACS. This should form part of verification cross checking standards as well as checking to see if the customer has a bank account for LHA payment purposes.

No: Go to point 14

Yes: Go to point 17

## 14. Give customer advice on how to open a bank or Credit Union account & advise them to get back in touch when they have one. Make payments via cheque until customer provides details of a bank account.

Issue appropriate money advice leaflets and give details on how to cash cheques.

Go to point 15

**15. Can customer obtain a bank account or credit union account?**

No: Go to point 16

Yes: Go to point 17

**16. Pay LHA to landlord or third party as appropriate**

All claims where payment is being made to a landlord or third party in these circumstances should be reviewed regularly.

**17. Pay LHA via BACS to customer.**

This will be where the circumstances of the customer shows:

- No rent arrears in excess of 8+ weeks
- No history of previously failing to pay rent
- No likelihood of being an 'unlikely payer'
- No vulnerability issues that may potentially lead to them being unable to manage their financial affairs

**End of process.**