

OADBY AND WIGSTON BOROUGH COUNCIL



LOCAL HOUSING ALLOWANCE POLICY

Version	Date	Comments	Author
1.3	11.03.08	Version jointly agreed by Leicestershire LAs	LALAT
1.4	13.06.11	Updated for legislation change – Housing Benefit (Amendment) Regulations 2010	Daren Nowlan
1.5	20.06.11	Updated for comments from benefit staff and submitted to management team.	Daren Nowlan
1.6	12.07.11	Approved by committee (Development)	Daren Nowlan

Introduction

Local Housing Allowance (LHA) is currently paid to either the landlord or claimant depending on several factors which are outlined in legislation (The Housing Benefit Regulations 2006). In the majority of cases it is the intention of legislation and central Government policy that LHA will normally be paid to the claimant.

In some cases the Council is required to pay LHA direct to the landlord and in other cases the Council may make payments direct to the landlord. This policy outlines the factors that will be considered where there is discretion in relation to this decision.

Reference Materials and Legislation

In compiling this policy, reference is made to the ‘regulations’; unless otherwise stated this refers to The Housing Benefit Regulations 2006 SI 213. Regulation 95 specifically provides for situations when the Council must make LHA payments direct to landlords and regulation 96 gives the situations when the Council may make payments of LHA direct to landlords. Regulation 96 has also been amended from 1 April 2011 by the Housing Benefit (Amendment) Regulations 2010.

This policy also draws upon information contain in the Housing and Council Tax Benefit (Decisions and Appeals) Regulations 2001, this is referred to the DA regulations in this document.

Finally, reference in this policy is also made to guidance, which refers specifically to the Department for Work and Pensions (DWP) Adjudication Circular A4/2011 and the LHA Guidance Manual also published by the DWP.

Required Direct Payments (Reg 95)

The Council is required to make payments of LHA direct to the landlord in the following cases; accordingly these cases are not discussed further in this policy:

- Where an amount of income support or a jobseeker’s allowance is payable direct to the landlord; or
- Where the benefit claimant is in arrears of an amount equivalent to 8 weeks or more except where it is in the overriding interest of the claimant not to make direct payments to the landlord.

Discretionary Direct Payment Cases (Reg 96)

The Government recognises there are circumstances where from time to time it may be necessary to make direct payment of LHA to private landlords to safeguard the claimant's best interests such as retaining or securing a tenancy. The list below is not exhaustive but has been compiled to provide an overview of the types of issues that the Council should consider when determining if LHA can be paid direct to a private landlord. Direct payments of LHA may be considered where the claimant (and any partner):

- is incapable of maintaining their own financial affairs; or
- suffers from drug, alcohol or gambling addictions; or
- is recently bankrupt or is experiencing significant debts problems; or
- is an asylum seeker or refugee; or
- was a former prisoner who has been recently released; or
- was recently homeless; or
- is prohibited from opening or maintaining a bank account; or
- was a recent victim of domestic violence; or
- was recently living in a care home or other such body; or
- is unable to communicate; or
- is vulnerable (for example suffering from a severe medical illness).

Also the Council may make payments of LHA direct in cases where:

- The Council considers it improbable that the claimant will pay their rent; or
- The claimant has previously had direct payments under regulation 95; or
- The rent has been negotiated with the landlord to a lower amount which is affordable* to the claimant; and
- Paying LHA direct will ensure the safeguarding or award of the tenancy.

* In the above paragraph, affordable rent is explained in DWP guidance A4/2011 paragraph 16.

Finally, the Council may make the first payment of LHA in whole or in part direct to the landlord in cases where it believes this will lead to efficient administration of LHA such as reducing fraud and error. In these cases the cheque must be payable to the landlord but sent to the claimant.

Applying for Direct Payment

Applications for direct payment will normally be made by the claimant or their representative. However, the following persons or bodies may also apply for direct payments of LHA:

- The landlord; or
- The housing service; or
- Any other welfare or debt advice body.

All applications must be made either in writing or email and should identify the claimant and their address as well as providing the landlords name and business address. All applications must also outline the specific reasons for requesting direct payments.

The Council should seek reasonable evidence in support of any applications for direct payment of LHA. The customer or their representative must provide this information and evidence within one month of being requested in writing, this is in line with existing regulations. If the information or evidence is not forthcoming the Council should make a decision in line with the information and evidence it has to hand.

Fit and Proper Landlord Test

The Council cannot pay LHA direct to any landlord who is not deemed 'Fit and Proper' within the meaning of regulation 95(3). The definition of an unfit landlord is very narrowly defined by DWP guidance as a landlord who:

- Has not repaid Housing Benefit overpayments; or
- Has been found guilty of, or admitted to committing Housing Benefit Fraud.

Decisions and Appeals

When making a decision about direct payments, the Council must consider each case on its own merits and have regard to the DWP over-riding policy intention that **payment of LHA will normally be made to the claimant**. However, decision makers must act reasonably and have regard to:

- the vulnerability of the claimant (and any partner or family member); and
- the effect of their decision in relation to safeguarding the claimants home (or potential home); and
- the wider guidance and legislation provided by the DWP; and
- the amount and reliability of any evidence or documentation provided to support the application for direct payments of LHA.

In all cases reasons for decisions must be properly recorded by the decision maker in the benefit notes of the claimant.

The Council will write and advise the person affected of their decision in relation to a request for direct payments of LHA. Any decision of the Council to make or refuse direct payments of LHA may be appealed in the normal manner set out in the DA regulations 2001. The same regulations permit the Council to suspend payments of LHA while it seeks additional information or evidence.