ABSTRACT: This report advises the Committee of a change in the Housing Benefit (Amendment) Regulations 2010 which came into force on 1 April 2011 introducing an additional landlord direct payment safeguard provision.

1. RECOMMENDATION(S)
   
   It is recommended that the Committee
   
   (i) note the changes to the Housing Benefit regulations
   
   (ii) note the changes are discretionary
   
   (ii) approve the proposed amendment to the Landlord Direct Payment Safeguard Policy.

2. BACKGROUND
   
   Report No 1181/07, Implementation of Local Housing Allowance was approved by the Corporate Services Committee on 6 December 2007.
   
   The report provided details of the Local Housing Allowance (LHA) which came into force on 7 April 2008. LHA replaced the previous Housing Benefit rent allowance for those tenants renting from private sector landlords. It does not include council or housing association tenants.
   
   One of the aims of LHA is to promote personal responsibility by empowering people to budget for and to pay their rent themselves, rather than having it paid for them, helping develop skills unemployed tenants need as they move back into work. The introduction of LHA removed the right tenants had under the previous scheme to choose to have their Housing Benefit paid direct to their landlord and all payments would now be made direct to the tenant.
   
   There are exceptions to this for claimants deemed unable to manage their financial affairs or unlikely to pay their rent and these are detailed in the Landlord Direct Payment Safeguard Policy.
   
   Members may also wish to refer to Report No 244/11 on Welfare Reform submitted to the Council on 24 March 2011 which provided an overview of the major changes to Housing and Council Tax Benefits arising from the UK Government’s Welfare Reform proposals.

3. CURRENT POSITION
   
   At present the Revenues & Benefits service has discretion to pay a tenant’s LHA direct to the landlord where:
   
   - the tenant is likely to have difficulty managing their affairs
   - it is improbable that the tenant will pay their rent

   LHA must be paid direct to the landlord where:
- the tenant has rent arrears of 8 weeks or more or is having deductions from their Income Support (IS) or Job Seekers Allowance (JSA) to pay off rent arrears.

Currently the Housing Benefit of 193 LHA tenants (14%) is being paid direct to their landlord for the reasons shown below.

<table>
<thead>
<tr>
<th>Reason</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrears &lt; 8 weeks</td>
<td>4</td>
</tr>
<tr>
<td>Arrears &gt; 8 weeks</td>
<td>118</td>
</tr>
<tr>
<td>Difficulty managing/paying</td>
<td>61</td>
</tr>
<tr>
<td>Discretion</td>
<td>6</td>
</tr>
<tr>
<td>Claimants interests</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>193</strong></td>
</tr>
</tbody>
</table>

On an annual basis the service has received the following number of applications for LHA to be paid direct to the landlord.

<table>
<thead>
<tr>
<th>Reason</th>
<th>2008/09</th>
<th>2009/10</th>
<th>2010/11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discretionary Requests</td>
<td>35</td>
<td>88</td>
<td>95</td>
</tr>
<tr>
<td>Tenant Arrears</td>
<td>57</td>
<td>179</td>
<td>256</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>92</strong></td>
<td><strong>267</strong></td>
<td><strong>351</strong></td>
</tr>
</tbody>
</table>

4. ADDITIONAL SAFEGUARD PROVISION

The amendment to the Housing Benefit regulations from 1 April 2011 widens the discretion for local authorities to make payment direct to the landlord where they consider that it will assist the customer in securing or retaining a tenancy. For a tenancy to be secured or retained the rent should be affordable to the tenant which is defined by the Department for Work and Pensions (DWP) guidance as at or below the relevant LHA rate.

The Government policy intention of this new safeguard provision is to exert a downward pressure on rent for Housing Benefit customers to mitigate the impact of changes to LHA rates effective from April 2011 as follows:

- maximum LHA rate capped at four bedrooms
- LHA rates now set at 30th percentile of rents rather than the median.

These changes affect new customers immediately from 1 April 2011 and for existing customers the changes take effect 9 months after the first annual review of their claim following 1 April 2011. This transitional protection is designed to provide existing claimants with time to make alternative tenancy arrangements if necessary.

The changes to LHA rates mean some customers will have a shortfall between their Housing Benefit entitlement and their rent. It may be possible for customers to negotiate a reduction in their rent to a level which the customer can afford. The additional safeguard provision is intended to facilitate this negotiation as some landlords may agree a reduction in the contractual rent in exchange for Housing Benefit being paid direct to them. It is intended that the Council will provide a central contact point for customers who require help with these negotiations with their landlord and although this is currently under consideration it is likely this contact person will be within the Housing service.

In other cases the additional provision may encourage landlords to set rent levels that Housing Benefit tenants can afford or to open the let to Housing Benefit customers.

Payment direct to a landlord under this safeguard provision will only apply where the Council is satisfied there is evidence to establish that a tenant has been able to retain or secure a tenancy where the rent is set at a level the customer can afford whilst in receipt of Housing Benefit.

For existing tenants before paying the landlord direct the Council would require evidence to confirm there has been a genuine reduction in the rent charged and this is detailed in the tenancy agreement. Where there is no genuine reduction in the rent the safeguard will not apply.
For customers seeking a new tenancy the safeguard would not apply unless the Council are satisfied the rent has been reduced and is affordable or the letting would not have taken place without direct payment and the rent is affordable. Landlords will require to provide evidence that the rent has been reduced and the rent for the previous tenancy was higher.

Applications for direct payment should come from the customer but may also be from the landlord or other interested parties.

Once payments are made under this safeguard provision they will continue unless the rent becomes unaffordable and they should be reviewed if the customer reports

- an increase in their rent
- a change in circumstances that results in a change in the LHA rate

Appendix 1 to this report sets out the proposed new Landlord Direct Payment Safeguard Policy (for ease of reference these are the highlighted areas) and the Committee is asked to approve this new policy for immediate implementation.

5. HOW THE REVISED SAFEGUARD POLICY WILL BE IMPLEMENTED

If the Committee approves the proposed amendment to the Landlord Paid Direct Safeguard policy the following actions will be carried out to advise claimants and landlords of the changes and operate the policy to obtain the best outcomes for customers:

- Publicise the additional safeguard provision to customers and landlords.
- Identify a dedicated resource to liaise and negotiate with landlords
- For existing tenants pay landlords direct on application where evidence is provided that the rent is affordable to the tenant whilst in receipt of Housing Benefit and has been reduced.
- For new tenants pay landlords direct on application where evidence is provided the rent has been reduced is affordable or the letting would not have taken place without direct payment and the rent is affordable.
- Notify landlords and customers in writing of the decision.
- Review direct payment cases where there is a relevant change of circumstances.

6. FINANCIAL IMPLICATIONS

There are no significant financial implications for the Council arising from this report aside from the costs of publicising the new policy which will be met from existing budgets. Arrangements to administer the new policy including supporting tenants to negotiate with landlords will likewise be met from existing resources available to the Revenues & Benefits Service and Housing Division as appropriate.

7. HUMAN RIGHTS IMPLICATIONS

There are no human rights implications arising as a result of this report.

8. EQUALITIES IMPLICATIONS

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment has been undertaken.

9. SINGLE OUTCOME AGREEMENT

This report contributes to the following local outcome contained within the single outcome agreement for Angus.

The housing needs of residents in Angus are met.
10. CONSULTATION
The Chief Executive, Head of Finance, Head of Housing and Head of Law and Administration have been consulted in the preparation of this report.

11. CONCLUSION
By approving the proposals detailed in this report the Council will provide further assistance and support to existing and new Housing Benefit customers in retaining or securing a tenancy at a reduced rent in return for the landlord being paid the Housing Benefit direct.

COLIN MCMAHON
DIRECTOR OF CORPORATE SERVICES

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

FIN/IL/GR
Local Housing Allowance – Landlord Direct Payment Safeguard Policy

Background

The Local Housing Allowance (LHA), in line with the aims of the scheme, will normally be paid to the claimant rather than to the landlord. From 7 April 2008 for claims falling under the Local Housing Allowance regulations the option for claimants to choose to have their Housing Benefit paid direct to their landlord was removed.

In recognition of the risk that some tenants may encounter difficulties dealing with the direct responsibility of budgeting for, and paying, their rent, the Department for Work and Pensions (DWP) has provided guidance on when direct payments to the landlord may be appropriate.

Local authorities have the discretion to make payment to the landlord if they consider:

a. 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.

b. That it is improbable that the claimant will pay their rent. For example, if the local authority is aware that the tenant has consistently failed to pay rent on past occasions without good reason.

c. That it will assist the claimant in securing or retaining a tenancy. For example where a claimant receives a reduction in their rent in return for the landlord being paid the Housing benefit direct to them.

Local authorities are required to pay a landlord direct in the following circumstances:

d. Where a tenant has built up rent arrears of eight weeks or more, or is having deductions from their Income Support (IS) or Jobseeker’s Allowance (JSA) to pay off rent arrears. However such payments are not mandatory where it is not in the overriding interests of the claimant or the landlord is deemed (for Housing Benefit purposes) not to be a fit and proper person.

Safeguard Policy

Tenants who are likely to have difficulty paying their rent

The DWP has advised that a local authority should consider whether the extent to which a tenant has difficulty managing their affairs means that they are unable to pay rent to their landlord on time. Most claimants are capable of managing their own financial affairs and it should be assumed that they are making payments of rent to their landlord unless there is evidence to the contrary. Where there is evidence that the claimant is not paying their rent, payments may be made direct to the landlord unless it is in the overriding interests of the claimant or his family not to do so. In such cases, direct payment will serve as a safeguard to ensure that rent is paid on time and the claimant and his family can continue to maintain their home.

The overriding consideration of this safeguard policy should be to ensure that any decisions taken are in the best interests of the claimant.

The aim of Angus Council’s safeguard policy is to:

- Provide a safeguard for the most vulnerable tenants and reassurance that their benefit and rent will be paid.
- Prevent rent arrears and tenants being put at risk of eviction.
- Help to sustain tenancies for vulnerable tenants.
• Reassure landlords that their rent will be paid direct if they have tenants who meet the criteria covered by the safeguard policy.
• Put in place arrangements for money advice and other support, in appropriate cases.
• Make reasonable, fair and consistent decisions.
• Promote a transparent process that is understood by both tenants and landlords.

The policy is not designed to:
• Supersede support that is being received to allow tenants the opportunity to be responsible tenants and be in control of their own income and expenditure.
• Be used by landlords to circumvent the aims of Local Housing Allowance.

Who can apply for consideration under the safeguard policy?

Representations asking for the consideration of direct payments of LHA to landlords under the safeguard policy may be accepted from a number of sources, including:

• The claimant or others acting on the claimant’s behalf such as:
  • The claimant’s family and/or friends
  • The landlord
  • General Practitioner
  • Criminal Justice Supervising Officer
  • Angus Council rent deposit scheme administrators, homelessness or housing advice officers
  • Welfare Rights Service
  • Social Work and Health
  • Department for Work and Pensions agencies
  • Homeless charities/organisations
  • Independent Advocacy

The above list is not exhaustive.

How will applications be made?

All applications under this policy will require to be made in writing, either on the Council pro-forma designed for this purpose or by letter. In the majority of cases, evidence will be required to support the application and guidance notes will be issued to applicants to clarify the evidence requirements. Where appropriate, an interview or home visit will be arranged to gather evidence or further information.

Who will make the decision?

A designated officer at Team Leader level within the Council’s Finance Division will be allocated the responsibility for dealing with all correspondence received in connection with LHA payment issues including the safeguard policy. Detailed procedural guidance has been drawn up to ensure consistency in decision-making and evidence gathering and compliance with the aims of this policy.

The decision making process

Three main factors require to be considered when reaching a decision

• Is the claimant likely to have difficulty in paying their rent?

• Is it in the interests of the claimant to make direct payments? In most cases, it is in the long-term interests of the claimant to manage their own affairs and make their own payments of rent. However, certain individuals may simply not be able to do this reliably.

• Could the claimant pay their rent themselves with appropriate help and support? Many claimants, who might otherwise have difficulty in managing their own financial affairs, may be able to do so if given initial help. In these cases, consideration will be given to making a referral to the designated officer in the Council’s Welfare Rights service.
Review of Decisions

Decisions to pay the LHA direct to the landlord under the safeguard policy provisions will be reviewed annually (unless the condition is of a long-term nature and a review would be inappropriate) or earlier if a relevant change of circumstances is notified or the claimant requests a review.

The review will not require a new application from the claimant but will entail a re-consideration of the circumstances.

Tenants who are unlikely to pay their rent

Most claimants are capable of managing their own affairs and it should be assumed that they will make payments of rent to their landlord unless there is evidence to the contrary. Where there is evidence that the claimant is not, or is no longer, paying their rent, payments may be made direct to the landlord unless it is in the overriding interests of the claimant or his family not to do so, for example where the tenant is in dispute with the landlord over repairs.

If the claimant builds up rent arrears of eight weeks or more, the landlord may commence action to evict the claimant. Once arrears have reached eight weeks, the local authority will, in most cases, need to make direct payments.

How will potential unlikely payers be identified?

Claimants and persons acting on their behalf or landlords may make representations to the Council that a tenant is unlikely to pay their rent. In certain circumstances the Council may take into account information held in Council records, which might indicate that the tenant is unlikely to pay his rent.

How will representations re: unlikely payers be made?

All requests for direct payment of LHA to a landlord on the basis that a tenant is unlikely to pay his rent will require to be made in writing, either on the Council pro-forma designed for this purpose or by letter. In the majority of cases, evidence will be required to support the application and guidance notes will be issued to applicants to clarify the evidence requirements. Where appropriate, an interview or home visit will be arranged to gather evidence or further information.

Who will make the decision?

A designated officer at Team Leader level within the Council’s Finance Division will be allocated the responsibility for dealing with all requests for payment direct of LHA to a landlord. Detailed procedural guidance has been drawn up to ensure consistency in decision-making and evidence gathering and compliance with the aims of this policy.

The decision making process

Three main factors require to be considered when reaching a decision

- Is the claimant unlikely to pay their rent? If they are, it may be appropriate to make direct payments. One of the key considerations will be past behaviour. If a claimant has a history of not paying their rent, this may indicate that they may not do so in the future (although past behaviour does not necessarily determine future actions).

- Is it in the interests of the claimant to make direct payments? In most cases, it is in the long-term interests of the claimant to manage their own affairs and make their own payments of rent. However, certain individuals may simply not be able or willing to do this reliably.

- Would the claimant be likely to pay their rent themselves with appropriate help and support? Many claimants, who might otherwise be unlikely to pay, may be able to do so, if given initial help. In these cases, consideration will be given to making a referral to the designated officer in the Council’s Welfare Rights service.

Review of Decisions
Decisions to pay the LHA direct to the landlord under the “unlikely to pay” provisions will be reviewed annually or earlier if a relevant change of circumstances is notified or the claimant requests a review. Where landlord direct payments are being made due to rent arrears, the local authority has the discretion to make payment of any excess (i.e. the amount of benefit payable above the level of the contractual rent, if there is any) to the landlord in order to assist with the repayment of the arrears. An estimate will be made of the length of time it would take to clear any arrears by this method and a review made of the case when it is estimated that arrears should have been repaid.

Tenants who receive a reduction in their rent

The amendment to the Housing Benefit regulations from 1 April 2011 widens the discretion for local authorities to make payment direct to the landlord where they consider that it will assist the customer in securing or retaining a tenancy. For a tenancy to be secured or retained the rent should be affordable to the tenant.

Due to the changes to LHA rates from 1 April 2011 some customers will have a shortfall between their Housing Benefit entitlement and their rent. It may be possible for customers to negotiate a reduction in their rent to a level which the customer can afford.

The additional safeguard provision is intended to facilitate this negotiation as some landlords may agree a reduction in the contractual rent in exchange for Housing Benefit being paid direct to them.

In other cases the additional provision may encourage landlords to set rent levels that Housing Benefit tenants can afford or to open the let to Housing Benefit customers.

The safeguard can only apply where the customer can be accepted as being able to retain or secure a tenancy where the rent is set at a level the customer can afford whilst in receipt of Housing Benefit.

How will applications be made?

Applications for direct payment should come from the customer but may also be from the landlord or other interested parties. All applications under this policy will require to be made in writing, either on the Council pro-forma designed for this purpose or by letter. In the majority of cases, evidence will be required to support the application and guidance notes will be issued to applicants to clarify the evidence requirements. Where appropriate, an interview or home visit will be arranged to gather evidence or further information.

For existing tenants before paying the landlord direct the Council would require evidence to confirm there has been a genuine reduction in the rent charged and this is detailed in the tenancy agreement. Where there is no genuine reduction in the rent the safeguard will not apply.

For customers seeking a new tenancy the safeguard would not apply unless the Council are satisfied the rent has been reduced and is affordable or the letting would not have taken place without direct payment and the rent is affordable. Landlords will be required to provide evidence that the rent has been reduced and the rent for previous tenancy was higher.

Who will make the decision?

A designated officer at Team Leader level within the Council’s Finance Division will be allocated the responsibility for dealing with all correspondence received in connection with LHA payment issues including the safeguard policy. Detailed procedural guidance will be drawn up to ensure consistency in decision-making and evidence gathering and compliance with the aims of this policy.

The decision making process

Three main factors require to be considered when reaching a decision

- Has the claimant retained their tenancy or are they securing a new one?
Is the rent affordable to them whilst in receipt of Housing Benefit? The safeguard will not apply where they cannot afford the rent whilst receiving Housing benefit.

Is there evidence of a reduction in the rent charged or would the letting not have taken place without direct payment? The claimant must have negotiated or received a reduction in the rent charged from that previously charged and the tenancy agreement must provide evidence of this.

Review of Decisions

Once payments are made under this safeguard they will continue unless the rent becomes unaffordable or if the customer reports

- an increase in their rent
- a change in circumstances that results in a change in the LHA rate
Eight weeks arrears cases

A tenant may not have been deemed to be either unable or unlikely to pay their rent under the provisions detailed above but their LHA may still be paid direct to their landlord when rent arrears have reached the equivalent of eight weeks or more.

Landlords will be encouraged not to wait for the eight-week period to be reached before contacting the Council so that early contact can be made with the tenant to establish whether consideration should be given to making direct payments immediately or making a referral to Welfare Rights before the arrears reach the eight week point.

Notification of Decisions

All decisions made under the provisions of this policy will be notified in writing to all relevant persons. Decision notices will give a full explanation of the person affected’s rights to request a reconsideration of, or appeal against the decision.

Reconsiderations and Appeals

Housing Benefit regulations prescribe the arrangements for dealing with reconsiderations and appeals against Housing Benefit decisions including direct payment decisions.

Where an appeal or request for reconsideration is received a designated officer who is not the original decision maker will review the decision. In any case where an appeal is received and it is decided that the original decision should stand the appeal will be submitted to the independent Tribunals Service who will schedule a hearing and decide the appeal.