

## Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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# HB/CTB A4/2011

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
<b>ACTION</b>	For information
<b>SUBJECT</b>	Direct payment of HB to landlords. Amendment to the safeguard provisions for claims assessed under the Local Housing Allowance (LHA) arrangements from April 2011

### Guidance Manual

The information in this circular affects the Local Housing Allowance Guidance Manual. Please annotate this circular number against *paragraph 4.040*.

### 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/>
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## Direct payment of HB to landlords. Amendment to the safeguard provisions for claims assessed under the LHA arrangements from April 2011

### Introduction

- 1 This circular contains further guidance on the operation of the new direct payment safeguard provision included in the Housing Benefit (Amendment) Regulations 2010 which come into force from 1 April 2011.
- 2 This guidance will be incorporated into the LHA Guidance Manual from April 2011.

### Background

- 3 For cases assessed under the LHA arrangements the default position is for benefit to be paid to the customer. LAs must make payment direct to the landlord in the circumstances prescribed in HB Regulation 95<sup>1</sup> when
  - payments are being made to the landlord from other income-related benefit to clear arrears (Regulation 95(1)(a))
  - the customer is in arrears equivalent to eight weeks with rent (Regulation 95(1)(b))
- 4 LAs also have discretion in Regulation 96(3A)<sup>2</sup> to make payment to the landlord where the
  - LA considers that the customer is likely to have difficulty in relation to the management of his financial affairs. For example, this may be due to drug dependency or because of a serious medical condition such as Alzheimer's disease (Regulation 96(3A)(b)(i))
  - LA considers that it is improbable that the customer will pay his rent, for example the LA knows from past experience that the tenant is likely to abscond with the rent payment (Regulation 96(3A)(b)(ii))
  - customer has previously had payments made to the landlord under Regulation 95 (arrears)

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<sup>1</sup> *Regulation 76 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006*

<sup>2</sup> *Regulation 77 Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006*

- 5 From 1 April we are widening this discretion by amending Regulation 96(3A) so that LAs can 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 it is implicit that the rent should be affordable to the tenant. Ministers have made clear that this additional discretion is a temporary provision. Currently, we expect it to remain in place until longer-term decisions about direct payments are made in the context of Universal Credit.

### The policy intention

- 6 The new safeguard provision is being introduced to exert a downward pressure on rents for HB customers after April 2011 when changes to LHA rates take effect as follows
- the removal of the five-bedroom LHA rate so that the maximum level is for a four-bedroom property
  - the introduction of absolute caps so that LHA weekly rates cannot exceed £250 for a one-bedroom property; £290 for a two-bedroom property; £340 for a three-bedroom property; £400 for a four-bedroom property
  - LHA rates to be set at the 30<sup>th</sup> percentile of rents in each Broad Rental Market Area rather than the median
- 7 These changes will affect new customers who claim from 1 April 2011 straight away. Existing customers will normally have up to nine months from the anniversary of their claim on or after 1 April 2011 to give them time to make alternative arrangements if necessary. See [HB/CTB Circular A25/2010](#) for more detail.
- 8 The changes to LHA rates will mean that some customers will have a new shortfall between their HB entitlement and their contractual rent. Some may need to move, but in other cases it may be possible for the customer (perhaps with specialist help, for example from the LA homelessness prevention team) to negotiate with the landlord a reduction in the rent to a level which the customer can afford.
- 9 The new safeguard provision could facilitate the negotiation, as some landlords are likely to agree a reduction in the contractual rent in exchange for benefit being paid directly to them. In other cases, the new provision could encourage landlords to let at rent levels that HB tenants can afford or to open up a let to HB customers in the first place.

- 10 The customer can only be accepted as being able to retain or secure a tenancy if the rent is at a level you consider they can reasonably afford whilst in receipt of HB. If the customer continues to have a shortfall which they cannot meet they will be unlikely to be able to meet their rental commitment and will be at risk of eviction. In these circumstances, they will not be able to retain the tenancy and so the safeguard will not apply.
- 11 It is intended that, once direct payments are being made under the new safeguard, they will continue unless the rent becomes unaffordable. See *paragraphs 24-31*. We will be reviewing the ongoing need for the additional safeguard as part of our monitoring and evaluation of the April 2011 changes.
- 12 Where the new provision does not apply, for example the landlord will not reduce the rent, you can consider whether safeguarding is appropriate under Regulation 96(3A)(b)(i) or Regulation 96(3A)(b)(ii) (tenant is unable or unlikely to pay their rent).

### Who should apply for direct payment?

- 13 Normally the initial approach for a direct payment should come from the customer but you may also be contacted, for example by the
- landlord
  - housing advice officers or the homelessness prevention team
  - welfare advice organisations, including money advisors
- 14 You may also identify cases where direct payments might provide a landlord with an incentive to reduce a rent or take on a HB tenant, and you could take steps to suggest it to both the customer and the landlord.
- 15 In most cases, the customer is likely to agree to direct payments to their landlord if the alternative is losing their tenancy or not being able to secure a new tenancy. If the customer is against direct payments it is for you to make a decision in their best interests. The normal considerations on whether the landlord is a fit and proper person apply. See [LHA Guidance Manual paragraphs 4.050-4.043](#)

### What is an affordable rent?

- 16 The intention is that the rent should be at a level which is affordable to the tenant. In the vast majority of cases this will be the LHA rate which applies to the customer and on which their maximum rent determination is based. However, some tenants may decide that they can pay slightly more than the LHA rate if they have other resources. For example, if they have resources such as capital to meet a shortfall. However you must be satisfied that the rent is affordable to the customer. Examples of when the safeguard might apply are at *Annex A*.

## **Evidence of a reduction in rent for existing tenancies**

- 17 For existing tenants, you will need to confirm that there has been a genuine reduction in the rent charged by the landlord and that the reduced contractual rent is in the tenancy agreement. In the majority of cases, this will need to be a reduction to the relevant LHA rate.
- 18 For existing customers who achieve a reduced rent at their current address the evidence should be clear, for example written agreement from the landlord to vary the rent or, if the tenancy has been renewed, it is at a lower rent than before. In some cases, it may simply be a case of checking the rental agreement.
- 19 If your homelessness prevention team or another team providing advice has been involved with negotiating a reduction on behalf of the tenant, they also could provide you with supporting evidence.
- 20 If you are not satisfied that there is a genuine reduction in the contractual rent you should not apply the safeguard.

## **Applying the safeguard to new tenancies**

- 21 The safeguard can also apply to customers seeking new tenancies who might not otherwise be able to secure a property with a rent which is affordable. You should not apply the safeguard unless you are satisfied that the rent has been reduced and is affordable or the letting would not have been made without direct payments and the rent charged is affordable.
- 22 To establish that there has been a reduction you may wish to ask the landlord to supply evidence that a tenancy at the address has previously been agreed at a higher rent.
- 23 If you are aware that the landlord has routinely let to HB customers at affordable rents without direct payments it would be reasonable to expect that they would continue to take on new tenants without direct payments. It is not the intention that the safeguard be used to make payment to the landlord as a matter of routine.

## **Notifying and reviewing your decision to make payment to the landlord**

- 24 Once you have made a decision to pay HB to the landlord, you should notify the customer and the landlord in the normal way. Additionally, both the customer and their landlord need to be aware that direct payments are conditional on the rent being kept at an affordable level whilst the customer remains at the address. Any increase in the rent could affect the decision to make payments to the landlord.

- 25 You should review the decision to make direct payment if the customer reports
- an increase in their rent (see *paragraphs 26-28*)
  - a change in circumstances that results in a change in the category of the dwelling (see *paragraphs 30-32*)

### **Customer reports an increase in the rent**

- 26 If the landlord increases the customer's rent the action you take will depend on whether or not you are able to determine a new maximum rent as follows. You may wish to advise customers specifically to inform you of an increase in rents immediately, to ensure that the new safeguard continues to be applied appropriately.
- 27 If the rent increases before the anniversary of the claim and you are unable to determine a maximum rent it is likely that the customer will be unable to afford to meet the increase. In these circumstances, it would not be appropriate to continue to apply the new safeguard and you will need to consider if payments should revert to the customer. However, you may wish to consider if either of the other safeguards under Regulation 96(3A) apply to the customer or if the customer has rent arrears amounting to eight weeks rent before making a decision to end direct payment to the landlord.
- 28 If the increase in rent coincides with the anniversary of the claim and the new rent is equivalent to the relevant LHA rate or is at a level the customer is able to afford you can continue to pay HB to the landlord. If the rent is no longer affordable you should not continue direct payments under the new provision.
- 29 If there is a reduction in the LHA rate at the anniversary of the claim which leaves the customer with a shortfall, you could review the decision to make direct payments. However, as the change is out of the landlord's control you may consider it unreasonable to cease paying them direct.

### **Customer reports a change that affects the category of dwelling**

- 30 If the customer reports a change that leads to a reduction in their maximum rent, for example a non-dependant leaves the household and their category of dwelling changes, the new maximum rent may result in a shortfall against the contractual rent. In these circumstances, the landlord may reduce the rent further, especially for long-established tenancies. However, it is less likely that landlords may be able to reduce the rent to the lower LHA rate in these circumstances.

- 31 You can continue to pay HB direct to the landlord whilst the customer considers their options. You may consider it appropriate to award a Discretionary Housing Payment if the customer needs time to find alternative accommodation or there are reasons why they are unable to move.
- 32 If the customer reports a change that means a higher LHA rate could apply to them, the landlord may at the same time increase the rent to take advantage of the higher rate. You will need to consider if the increase is both reasonable and affordable for the customer. For example, did the property have more bedrooms than the customer was previously entitled to and do the customer's new circumstances mean that the property is the right size for the household? In these circumstances you may consider it reasonable to continue paying the HB direct to the landlord.

### **Making customers and landlords aware of the change**

- 33 So that customers and landlords are aware of this change you may wish to run an awareness campaign as a matter of good practice by, for example
- including information in letters to customers when you write to them about the change to their LHA rate
  - providing information on your authority's website
  - holding forums for your local landlords to discuss the changes to LHA and how the new safeguards will be applied
  - discussing the changes with local landlord associations and attending events where possible
- 34 In addition, we recommend that you consider how best to directly target local landlords, for example by writing to landlords or letting agencies to ensure they are aware of the changes and particularly how the new safeguards will operate.
- 35 Publicising the changes and encouraging customers to approach their landlords in advance of any reductions to their benefit will help them to have timely negotiations before their transitional protection ends and avoid the customer getting into arrears with their rent.

## **Liaising with your LA homelessness prevention team and other teams giving advice**

- 36 In preparation for the LHA changes that are coming into effect this year, we recommend that HB teams liaise closely with teams giving housing advice in relation to the changes. Customers may seek housing advice from the LA, particularly if they have got into difficulties with their tenancy. Ensuring that the relevant teams are aware of the change will help them provide advice to customers and negotiate with a current landlord or a new landlord on their behalf.
- 37 In particular, you may wish to clarify which teams should have responsibility for advising customers on negotiating with the landlord or, if necessary, negotiating on their behalf. Your authority may have teams providing advice on money and budgeting who could be involved. Closer working across your LA is likely to help prevent a customer's housing problems from getting out of control and help prevent homelessness.

## **Contact for enquiries**

- 38 For enquiries relating to the LHA arrangements please contact [Eugene.Okonkwo@dwp.gsi.gov.uk](mailto:Eugene.Okonkwo@dwp.gsi.gov.uk)

## Examples of the application of the new safeguard provision

**Saskia** makes a new claim for HB in May 2011 after a period of six months in employment. The rent for her studio flat is £180 a week. The LHA rate for one-bedroom properties in the area in which she lives is £174 and the LA starts to make payment to her at that rate.

Saskia contacts the HB team to ask if she might be able to get a Discretionary Housing Payment to meet the shortfall. The HB team tells her that she can make a claim but that she might be able to get her landlord to reduce her rent in return for direct payment. They ask if she feels able to talk to her landlord about it or would she prefer some support. Saskia decides to approach her landlord herself and the benefits team advises that they will need confirmation from the landlord that he will reduce the rent.

The landlord agrees the reduction in rent providing that benefit is paid direct to him and makes an adjustment to the rental agreement. The LA agrees to make direct payments.

**Simon** and his family live in London. They currently rent a four-bedroom property at £500 a week. The LA tells Simon that his eligible rent will be capped at £400 from March 2012.

Simon has discussed his situation with his landlord who isn't prepared to lower the rent. He is unsuccessful in finding anywhere else in the immediate area within the £400 limit and decides to seek housing advice from the LA. The homelessness prevention team approaches a landlord who has suitable accommodation advertised above the £400. They negotiate on Simon's behalf. The landlord agrees to take Simon as a tenant at a rent of £400 in return for direct payments. The homelessness prevention team goes on to liaise with the HB team to agree direct payments to the landlord and help Simon claim a Discretionary Housing Payment towards his deposit on the new property.

**Yusef** lives in a two-bedroom flat with his wife and 25- year-old daughter. His rent is £200 a week and his LHA rate is currently £205, so he receives a small excess.

He is advised by the LA that as from January 2012 his eligible rent will reduce to £190. There is a non-dependant deduction for his daughter of £29.60. The LA advises Yusef about the availability of direct payments to landlords if they agree to a reduced rent. He discusses a reduction in rent with his landlord. The landlord is prepared to reduce the rent to £195 a week in return for direct payments of HB but no further. However, Yusef's daughter is prepared to contribute more than the £29.60. Yusef takes written confirmation of the reduction in rent to his LA and tells them that his daughter is going to make up the shortfall. The LA agrees to pay HB to his landlord but Yusef has to ensure that his daughter's contribution is paid to the landlord.

**Adam** and his wife pay rent of £150 a week for a one-bedroom flat. The LHA rate is currently £160 and Adam gets a £10 excess. At the anniversary of his claim in June 2011 Adam loses his £10 excess and his HB reduces to £150 a week.

In July 2011 the landlord notifies Adam that she is increasing the rent to £160 a week from August 2011 when the tenancy is due for renewal. Adam tells the LA but the benefit section informs him that they will be unable to re-determine his HB until his next anniversary in June 2012. Adam explains to the landlord that his HB cannot be increased. His landlord is unwilling to renew the tenancy. Adam approaches the homelessness prevention team for advice. The team contacts the landlord and asks her if she will be prepared not to increase the rent in return for direct payment. The landlord agrees and renews the tenancy at £150 a week and the local authority commences direct payments to her.

**Maria** needs to leave her current tenancy because she cannot afford her rent because of a reduction in her LHA rate. She has two children aged less than 10 years. A friend puts her in touch with a landlord of a two-bedroom flat for which he charges £200 a week. The local LHA for a two-bedroom flat is £215 in March 2011 and reduces to £205 in April 2011.

The landlord has not let to anyone on benefit for some time as a previous tenant left without paying the rent. He says that he is willing to let to Maria and her two children, if HB is paid direct to him. The LA agrees to pay HB direct, as otherwise it would not have been possible for Maria to secure the tenancy and she would have been at risk of being made homeless.