

# **South Lakeland District Council**

## **Local Housing Allowance**

### **Safeguard Policy**

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## Introduction and Background

From 7<sup>th</sup> April 2008, Local Housing Allowance (LHA) will replace Housing Benefit (HB) for most tenants renting property in the private sector. The change will affect anyone making a new claim for benefit, or changing his or her address.

The Department for Work and Pensions (DWP) has introduced LHA to provide tenants with more choice and responsibility about where they live and how they manage their own finances. The two main features of the scheme are:

- **Choice:** LHA will be paid at a flat rate, based on family size and personal circumstances. Under the current rules, the rate of HB depends on a valuation made by the Rent Service, based on the location, size and condition of the property. Under LHA, tenants will have greater choice about where to live, without this affecting their benefit. In addition, tenants will also be able to keep some of the excess benefit, where the rate of LHA is more than their rent.
- **Personal responsibility:** In the majority of cases, LHA will be paid direct to the tenant. Under the current rules, the tenant can choose to have their HB paid to their landlord. The DWP firmly believe that tenants should be responsible for receiving LHA themselves and paying their own rent, reflecting the way other welfare benefits are paid. Giving tenants responsibility for their own finances will improve their opportunities for accessing work.

## Purpose of the policy

However, the DWP recognise that paying LHA directly to the tenant will not always be appropriate in every case. Issues of vulnerability and the risk of a tenant not paying their rent should be safeguarded against. The purpose of this document is to set out the Council's policy for determining the circumstances where payments of LHA will be made to the landlord, instead of the tenant.

## Aims and objectives

The aims and objectives of this policy are to:

- Provide a safeguard for the most vulnerable tenants and reassure them that their benefit and rent will be paid
- Help prevent rent arrears and tenants being put at risk of eviction
- Help sustain tenancies for vulnerable tenants
- Reassure landlords that their rent will be paid if they have vulnerable tenants or if they are approached by vulnerable tenants
- Help put tenants in touch with other agencies where appropriate and give people the opportunity and support to manage their own tenancies and finances
- Ensure that Council officers make reasonable, fair and consistent decisions
- Promote a transparent and simple process that is widely understood
- Treat each case individually and avoid making assumptions about people's situations.

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This policy is not designed to:

- Replace, supersede or conflict with existing policies and strategies to deliver support to tenants who need help with maintaining their tenancies and help with being responsible for their own income and expenditure
- Be used as a blanket policy by Council officers for determining the vulnerability of tenants
- Be used by landlords to get around the aims of the LHA.

There are two main reasons why the Council may need to consider this policy:

- Where the tenant is vulnerable
- Where it is unlikely that the tenant will pay their rent.

## Vulnerable tenants

### Introduction

The term '*vulnerable*' in this context is where the Council considers that the tenant is likely to have difficulty managing their affairs. The intention is to prevent tenants who are likely to experience difficulties from falling into rent arrears.

The phrase '*is likely*' means that it will be more likely than not that the tenant will be unable to manage their affairs. It will not be sufficient to conclude that there is a *possibility* that the tenant may have difficulty managing their affairs or that, because tenants in certain circumstances carry a *risk* that they may be unable to manage their affairs, the Council will pay the landlord direct.

The Council will investigate each case thoroughly when considering representations that a tenant is likely to have difficulty managing their affairs.

The Council will identify those tenants who may wish to be classed as vulnerable simply because they would prefer to have payments of LHA sent direct to their landlord. The intention is to distinguish between tenants who chose to manage their finances in a less organised way and those that genuinely have difficulty managing their affairs.

The Council will ensure that the *vulnerability* condition is not used to circumvent the fact that there is no longer a provision for the tenant to request direct payments to their landlord.

In the majority of cases, the Council will require supporting evidence from professional bodies such as doctors, social workers or probation officers, before deciding that someone is '*vulnerable*'

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## Possible indicators that a tenant may be vulnerable

By '*indicators*' the Council will consider both the causes and effects of vulnerability. The Council will never decide a tenant is vulnerable simply because they match one of the indicators listed below. The presence, or absence of any of these indicators will only be used to allow the Council to investigate possible causes or effects of vulnerability.

- **People with learning disabilities**, ranging from mild to severe problems. People with severe learning disabilities are likely to have an appointee to deal with their financial affairs, or be resident in Supported Accommodation, which is exempt from the LHA scheme. In cases where there is representation that a tenant has learning disabilities, the Council will usually seek confirmation of this from a care worker or a doctor.
- **People with a medical condition**, that is likely to seriously impair a person's ability to manage their affairs on a day-to-day basis. This could be a mental illness, such as schizophrenia, depression or age related mental deterioration such as Alzheimer's disease or senile dementia, or a physical or sensory impairment. In these cases the Council will consider how a tenant's other financial affairs are conducted, for example if they are supported to carry out these tasks. In cases where there is representation that a tenant has a medical condition, the Council may seek confirmation of this from a doctor or other medical professional.
- **People with literacy problems**. This could be people who have difficulty in reading or writing, or could be people with financial illiteracy. The Council will look at all the evidence currently held about the tenant, including how the application for LHA had been completed, whether a Council officer or other third party had given assistance and how the tenant had responded to enquiries about their claim. In these cases the Council will consider how a tenant's other financial affairs are conducted, for example if they are supported to carry out these tasks.
- **People whose first language is not English**. The Council will look at all the evidence currently held about the tenant, including how the application for LHA had been completed, whether a Council officer or other third party had given assistance and how the tenant had responded to enquiries about their claim. In these cases the Council will consider how a tenant's other financial affairs are conducted, for example if they are supported to carry out these tasks. Language difficulties alone are unlikely to lead to a decision that a tenant is unable to manage their financial affairs.
- **People with an addiction to drugs, alcohol or gambling**. In cases where there is representation that a tenant has an addiction to drugs, alcohol or gambling which makes them unable to manage their own affairs, the Council will usually seek confirmation of this from a suitably qualified professional, such as a doctor, care worker, probation officer or a support worker from an organisation for these addictions.
- **People with severe debt problems**. In all cases where there is representation that a tenant has severe debt problems or recent County Court Judgements, which makes them unable to manage their own affairs, the Council will usually seek confirmation of this from a relevant professional or voluntary organisation,

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such as the Citizens Advice Bureau, Welfare Rights organisations or other advice agencies. In addition, the Council will usually need to see evidence of the debts and how they are currently being managed, for example if the person is being supported to manage his / her financial affairs.

- **People who are unable to manage their tenancy without support.** This could include people who have previously been homeless, or recently released from prison. In these cases, the Council will usually seek confirmation of this from a relevant professional or voluntary organisation, such as homelessness officers, advice agencies or probation officers.
- **An inability to obtain a bank account.** Where the tenant states that they are unable to obtain a bank account, the Council will usually seek confirmation of this from banks or from a relevant third party, such as the Citizens Advice Bureau, Welfare Rights organisations or other advice agencies.

## Who can make representation

In most cases, the person making the claim for LHA will identify themselves as vulnerable. However, although there is no legal obligation on the Council to proactively identify tenants who may have difficulty in managing their own financial affairs, the Council recognises that it may be difficult for tenants to present themselves as vulnerable.

The Council will therefore take reasonable steps when a person makes a claim for LHA to find out if an issue of vulnerability may prevent the tenant from paying their rent.

The Council will identify potential cases through representation by one or several of the following sources:

- **The tenant claiming LHA.** This includes their carer, representative or advocate. However, persons who have been appointed to act on behalf of a tenant who is “unable for the time being to act”, will not be classed as vulnerable. Nor will the tenants they act for, until such time as they cease to have an appointee acting for them. Where the tenant has stated they are vulnerable but further evidence is required, payments of LHA will be made to the landlord in the interim.
- **Friends and family of the tenant.** In all cases where representation has been made by the friends and family of the tenant, no information will be disclosed or discussed with them without the tenant’s permission. Where the tenant has not stated they are vulnerable, the Council will either interview or visit the tenant to establish the facts, and may consider contacting a third party (e.g. a Welfare Rights or other advice agency), with the tenant’s consent. Where further evidence is required, the Council will decide whether payments of LHA should be made to the tenant or the landlord in the interim, on a case by case basis.
- **The landlord.** In all cases where the landlord has made representation, no information will be disclosed or discussed with them without the tenant’s permission. Where the tenant has not stated they are vulnerable, the Council will either interview or visit the tenant to establish the facts, and may consider contacting a third party (e.g. a Welfare Rights or other advice agency), with the tenant’s consent. Where further evidence is required, the Council will decide whether payments of LHA should be made to the tenant or the landlord in the interim, on a case by case basis. The Council will not conclude from the

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landlord's representations alone that the tenant should be treated as vulnerable. The Council will not consider speculative requests from landlords (i.e. those representations without the consent of the tenant and not backed up with evidence).

- **Officers of the Council.** It may be apparent from an interview or visit to the tenant's home by a Council officer, that they may be vulnerable. In all cases the officer will discuss this with the tenant and may consider contacting a third party (e.g. a Welfare Rights or other advice agency), with the tenant's consent. Where further evidence is required, the Council will decide whether payments of LHA should be made to the tenant or the landlord in the interim, on a case by case basis.
- **Citizens Advice Bureau, Welfare Rights groups and other support, voluntary or statutory organisations.** In all cases where representation has been made by a third party organisation, no information will be disclosed or discussed with them without the tenant's permission. Where the tenant has not stated they are vulnerable, the Council will either interview or visit the tenant to establish the facts. Where further evidence is required, the Council will decide whether payments of LHA should be made to the tenant or the landlord in the interim, on a case by case basis. However, representation from one of these organisations, with the tenant's permission will usually constitute sufficient evidence to make a decision.

The Council will generally expect representations to be made in writing, however verbal representations will be accepted, so long as they are supported with sufficient evidence.

## Decision making

Once representation has been made and all of the required supporting evidence received, the Council will make a decision on vulnerability and notify the tenant and landlord in writing (and/or other third party if relevant and with the tenant's consent). However, where the Council has been unable to establish the facts because of the tenant's failure to co-operate or due to a lack of response from the tenant, the Council will consider whether this failure to co-operate or respond does in itself constitute vulnerability.

In all cases where further evidence is required to make a decision on vulnerability, the Council will not delay the processing or payment of the LHA claim.

## Referral to other organisations

Where a tenant has declared themselves vulnerable because;

- they have severe debt problems, or
- they have a need for monetary advice or housing related support, or
- they have been unable to open a bank account,

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the Council will refer the tenant (or encourage them to seek advice and guidance) to a relevant organisation who will be able to assist them. These could include:

- The Citizens Advice Bureau
- Welfare Rights groups
- Debt advice agencies
- Supporting people teams
- Tenancy support organisations
- Community Legal Advice services
- Other voluntary sector groups

## **Supporting people**

This policy is not intended in any way to undermine the principles of the Supporting people programme, which is to enable vulnerable people to manage their own tenancies and live as independently as possible. Vulnerable tenants may be receiving housing related support through an organisation funded by Supporting people. In these cases, budgeting skills and support to manage their own financial affairs may be a key part of the tenant's support plan.

In these cases, the Council will contact the support agency, care worker or Supporting people team for advice on whether to pay LHA to the tenant or direct to the landlord.

The LHA scheme will not apply to tenants receiving support in "excluded" tenancies, i.e. accommodation based Supporting people services. However, private tenants receiving floating support will be subject to LHA.

## **Duration of the decision**

In all cases where the Council has decided that a tenant is vulnerable, they will also decide when this decision should be reviewed.

The majority of decisions will be relatively short-term (up to 6 months), if for example the tenant requires debt advice, help opening a bank account or is on a waiting list for a housing related support provider.

Other reasons, such as longer term medical conditions or disabilities may require a lengthier review period (over 6 months). In exceptional cases, the Council may decide that the vulnerability is likely to be permanent and will not require reviewing.

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In all cases, the Council will seek the advice of appropriate professional or voluntary organisations with the consent of the tenant, on the duration of the review period and whether the tenant should still be classed as vulnerable.

Once evidence has been received that a tenant is no longer vulnerable and with agreement with the tenant, payments of LHA will be made to the tenant. In all cases, the Council will act in the best interests of the tenant and in accordance with the aims and objectives of this policy.

## **Disputes and appeals**

Where the tenant, landlord or other organisation working on behalf of the tenant with their consent disputes a decision on vulnerability, the decision will be reviewed by an Adjudication Officer that has had no previous involvement with the case and all affected parties will be notified of the outcome.

Where appropriate, the Council will engage with other organisations (with the consent of the tenant), such as Citizens Advice Bureau or Welfare Rights, to provide an independent view and review the evidence collated.

Alternatively, the tenant or affected party can ask for an appeal through the Tribunal Service. This will be conducted in accordance with the current regulations for revisions and appeals.

## **It is unlikely that the tenant will pay their rent**

### **Introduction**

The LHA regulations allow for payments to be made directly to a landlord where the Council considers that *'it is improbable that the claimant will pay his rent'*. The intention is to protect tenants who are likely to act irresponsibly from falling into rent arrears. The Council will balance the aim of the LHA scheme to encourage tenants to take responsibility for their rent payments with the need to ensure tenants can maintain their tenancies and that landlords are not damaged financially.

The phrase *'is improbable'* means that there will be a degree of probability that the tenant will not pay their rent. It will not be sufficient to conclude that there is a *possibility* that the tenant may not pay their rent or that, because all tenants carry a *risk* that they may not pay their rent, the Council will pay the landlord direct.

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The Council will investigate each case thoroughly when considering representations that it is unlikely that the tenant will pay their rent.

The Council will seek to identify those tenants who are genuinely *'unlikely to pay'* their rent as opposed to those who may claim that they are not likely to pay their rent because they would prefer not to take that responsibility.

The Council will ensure that the *'unlikely to pay'* condition is not used to circumvent the fact that there is no longer a provision for the tenant to request direct payments to their landlord.

In the majority of cases, the Council will usually require supporting evidence, before deciding that a tenant is *'unlikely to pay'* their rent.

## **Possible indicators that a tenant is unlikely to pay their rent**

The consideration that the Council will be required to make is whether a person is unlikely to pay their rent, not whether a person has a history of failing to make other payments or has experienced debt problems. A history of rent arrears could, therefore indicate that a tenant may not place great importance on paying their rent. This could be in their current tenancy, or in a recent previous tenancy, including a former Council tenant.

Where representation is received, but with no actual evidence that a person is unlikely to pay their rent, possibly due to the fact that until now the tenant's landlord has been in receipt of direct payments, the Council will usually make payment to the tenant. However, in these cases the Council will ensure the tenant is acting responsibly and will request evidence of rent paid, once LHA is in payment. The actions taken by the tenant once LHA has been received will be treated as evidence to determine whether a tenant is likely to pay their rent.

Where a person has always paid their rent on time, but has other financial problems, the Council will usually make payments to the tenant, as there will be no evidence to suggest that they will not pay their rent. However, where a person has not previously had a rental liability and so cannot have failed to pay their rent, then other arrears or debts will be taken into account. In situations where HB has always been paid direct to the landlord, other financial dealings will be taken into account.

The tenant's credit history will generally be a useful indicator. Arrears of priority and non-priority debts could all indicate that the tenant does not manage their money sufficiently well and is unlikely to do so in the future. Greater emphasis will be placed on the non-payment of priority debts.

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Priority debts are:

- Rent
- Mortgage
- Council Tax
- Water rates
- Gas and electricity

Non-priority debts are:

- Unsecured loans
- Credit and store cards
- Catalogues and club memberships
- Telephone and mobile phone charges

The Council will examine records of arrears and in particular where records show persistent arrears or a failure to keep to arrangements that have been made with the tenant. In particular, the Council will examine its own records in relation to Housing, Council Tax and HB overpayments. However, where representation has been made by a third party (e.g. a landlord), Housing or Council Tax records will not be examined without the consent of the tenant.

The existence of County Court Judgements will not automatically render a person *'unlikely to pay'*, however these would be taken into account along with other evidence. Consideration will be given to the reason why the judgement was obtained.

## **Who can make representation**

In most cases, it would be unusual for the tenant to suggest that it is improbable that they will pay their rent. It will be more likely that such evidence will be provided by a landlord (both past and present) or a third party who can demonstrate experience or knowledge of the tenant's behaviour.

Without any representation, the Council will not usually undertake any enquiries when a person makes a claim for LHA to find out if they will be unlikely to pay their rent, unless existing records held show a history of arrears or non-payment of rent.

The Council will identify potential cases through representation by one or several of the following sources:

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- **The tenant claiming LHA.** This includes their carer, representative or advocate. However, persons who have been appointed to act on behalf of a tenant who is “unable for the time being to act”, will not be classed as unlikely to pay their rent. Nor will the tenants they act for, until such time as they cease to have an appointee acting for them. Where the tenant has stated they are unlikely to pay their rent but further evidence is required, payments of LHA will be made to the landlord in the interim.
- **Friends and family of the tenant.** In all cases where representation has been made by the friends and family of the tenant, no information will be disclosed or discussed with them without the tenant’s permission. Relatives and friends may provide useful information, which may support other evidence, but the Council will not usually conclude from their representations alone that the tenant should be treated as unlikely to pay. Where the tenant has not stated they are unlikely to pay, the Council will either interview or visit the tenant to establish the facts, and may consider contacting a third party (e.g. Council Tax or a previous landlord), with the tenant’s consent. Where further evidence is required, the Council will decide whether payments of LHA should be made to the tenant or the landlord in the interim, on a case by case basis.
- **The landlord.** In all cases where the landlord has made representation, no information will be disclosed or discussed with them without the tenant’s permission. A past or present landlord will have first hand experience of whether a tenant has paid their rent in the past, although the Council will always seek evidence of this to support such representations. However, only recent evidence to show that a tenant has persistently failed to pay their rent without a good reason will be considered. Where the tenant has not stated they are unlikely to pay, the Council may either interview or visit the tenant to establish the facts, and may consider contacting a third party (e.g. Council Tax or a previous landlord), with the tenant’s consent, depending on the strength of the evidence presented by the landlord. Where further evidence is required, the Council will decide whether payments of LHA should be made to the tenant or the landlord in the interim, on a case by case basis. The Council will not consider speculative requests from landlords (i.e. those representations on the basis that the tenant has missed, or has been late with the most recent payment of rent). However, in these cases, the Council will take appropriate action to ensure the tenant is acting responsibly. For example, non-payment of rent could suggest that the tenant has left the property without informing the landlord or the Council. In these cases, a visit to the property will be arranged.
- **Citizens Advice Bureau, Welfare Rights groups and other support, voluntary or statutory organisations.** In all cases where representation has been made by a third party organisation, no information will be disclosed or discussed with them without the tenant’s permission. Where the tenant has not stated they are unlikely to pay, the Council will either interview or visit the tenant to establish the facts, and may consider contacting a third party (e.g. Council Tax or a previous landlord), with the tenant’s consent. Where further evidence is required, the Council will decide whether payments of LHA should be made to the tenant or the landlord in the interim, on a case by case basis. However, representation from one of these organisations, with the tenant’s permission will usually constitute sufficient evidence to make a decision.

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The Council will usually expect representations to be made in writing, however verbal representations will be accepted, so long as they are supported with sufficient evidence.

## **Decision making**

Once representation has been made and all of the required supporting evidence received, the Council will make a decision on whether the tenant is unlikely to pay their rent and notify the tenant and landlord in writing (and/or other third party if relevant and with the tenant's consent).

In all cases where further evidence is required to make a decision on whether the tenant is unlikely to pay their rent, the Council will not delay the processing or payment of the LHA claim.

In making the decision on whether the tenant is unlikely to pay their rent, the Council will also consider the following:

- If the tenant is 8 weeks or more in arrears, then HB Regulation 95(1)(b) applies and payment of LHA will be made to the landlord under the statutory provisions.
- Where arrears have risen over a period when LHA did not meet the full rental liability and the tenant was not able to make up the shortfall, the tenant will not automatically be assumed to be unlikely to pay their rent.
- A tenant who has failed to use LHA payments to pay their rent in the past will be assumed to be unlikely to pay their rent unless good reasons for non-payment are provided. For example, where a tenant has justifiably withheld rent because their landlord has failed to carry out repairs when asked. The tenant must have acted responsibly and legally in their actions.
- The Council will consider any arrangements that the tenant has made to pay their rent and whether they have kept to those arrangements.

Where there is insufficient evidence that it is unlikely a tenant will fail to pay their rent, the Council will usually make payment of LHA to the tenant.

## **Referral to other organisations**

Although making a decision on improbability that a tenant will pay their rent is different to vulnerability, the Council will still consider whether it is appropriate to refer or signpost the tenant to specialist advice and support. Where a tenant has:

- severe debt problems, or
- a need for monetary advice or housing related support,

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the Council will refer the tenant (or encourage them to seek advice and guidance) to a relevant organisation who will be able to assist them. These could include:

- The Citizens Advice Bureau
- Welfare Rights groups
- Debt advice agencies
- Supporting People Teams
- Tenancy Support organisations
- Community Legal Services
- Other voluntary sector groups

## **Duration of the decision**

In all cases where the Council has decided that a tenant is unlikely to pay their rent, they will also decide when this decision should be reviewed.

The majority of decisions will be relatively short-term (up to 6 months), if for example the tenant requires debt advice, or is on a waiting list for a housing related support provider.

Following advice from those agencies, the Council may require a lengthier review period (over 6 months). In exceptional cases, the Council may decide that the inability to pay their rent is likely to be permanent and will not require reviewing.

In all cases, the Council will usually seek the advice of appropriate professional or voluntary organisations with the consent of the tenant, on the duration of the review period and whether the tenant should still be classed as *'unlikely to pay'* their rent.

Once evidence has been received that a tenant is no longer unlikely to pay their rent and with agreement with the tenant, payments of LHA will be made to the tenant. In all cases, the Council will act in the best interests of the tenant and in accordance with the aims and objectives of this policy.

## **Disputes and appeals**

Where the tenant, landlord or other organisation working on behalf of the tenant with their consent disputes a decision on an inability to pay rent, the decision will be reviewed by an Adjudication Officer that has had no previous involvement with the case and all affected parties will be notified of the outcome.

Where appropriate, the Council will engage with other organisations (with the consent of the tenant), such as Citizens Advice Bureau or Welfare Rights, to provide an independent view and review the evidence collated.

Alternatively, the tenant or affected party can ask for an appeal through the Tribunal Service. This will be conducted in accordance with the current regulations for revisions and appeals.

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## **Eight week arrears cases**

The HB regulations state that payments are to be made to the landlord where a tenant is 8 weeks or more in arrears with their rent, except where it is in the overriding interests of the tenant not to make payments to the landlord. This is a mandatory provision for direct payment and unless it is in the overriding interest of the tenant not to do so, there is no other discretion in this matter.

Where the landlord has stated the tenant is 8 weeks or more in arrears with their rent, the Council will request evidence of this before making direct payments.

Tenants whose rent is charged 8 weeks in advance by their landlord, will not be classed as being in arrears for the purposes of this provision. The amount payable to the landlord will be restricted to the rent charged and any arrears that are outstanding. LHA already paid to the tenant cannot be paid again to the landlord for the same period.

All affected parties will be notified in writing of the Council's decision and will be able to dispute the decision, or appeal.

In all cases where the Council has decided that a tenant is 8 weeks in arrears of their rent, they will also decide when this decision should be reviewed. Once the tenant is no longer in arrears with their rent, the Council will revert payments back to the tenant. However, before doing so the Council will consider if any of the 'unlikely to pay' provisions apply.

## **Other considerations**

Where it appears to the Council that circumstances may have been contrived in order to secure direct payment of LHA to the landlord and circumvent the aims and objectives of this policy, the normal provisions outlined in this policy will not apply.

Where the Council considers that the landlord is not 'fit and proper', in accordance with the HB regulations, no payments of LHA will be made direct to the landlord under the provisions of this policy.

In these circumstances the Council will decide who the most appropriate person to pay the LHA will be (other than the landlord), which is in the best interests of the tenant.

Where the amount of LHA is greater than the rent charged, the Council will pay LHA up to the level of the rent direct to the landlord, under the provisions of this policy. Any remaining payment of LHA over the amount of the rent charged will be due to the tenant.

In these circumstances the Council will decide who is the most appropriate person to pay this amount to, which is in the best interests of the tenant. For example, where payments of LHA are made to the landlord under the 'unlikely to pay' provision, any excess will generally be paid to the tenant. However, where payments of LHA are made to the landlord under the 'vulnerability' provision, it may not be appropriate to pay the excess direct to the tenant.

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