



## Paying Local Housing Allowance direct to tenants in private rented housing

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The Labour Government piloted a new flat-rate Local Housing Allowance (LHA) based on area and family size in 9 local authorities from November 2003 (later rising to 18 authorities). Alongside this flat-rate allowance the Government required these pathfinder authorities to only pay HB direct to private landlords in certain limited cases. It had increasingly become the norm for landlords to require tenants claiming Housing Benefit (HB) to agree to the benefit being paid direct to them as a condition of granting a tenancy.

Subsequently the LHA was introduced for all new HB claimants in the deregulated private rented sector from 7 April 2008 – except in certain exceptional cases this benefit is paid direct to claimants. This move away from paying HB direct to landlords is controversial – a key concern of landlords is that it has resulted in increased rent arrears. Direct payments to claimants will continue when the Universal Credit is phased in (phasing is expected to begin in October 2013).

This note sets out the legal position in relation to HB direct, discusses the pathfinder programme and evidence of the impact of direct payments to date. It goes on to consider the arrangements that will apply when the LHA/HB is replaced by the housing element of Universal Credit.

The Work and Pensions Select Committee carried out an inquiry over 2009-10 on the LHA which was published in March 2010. The report of the inquiry stated that direct payments were the most controversial aspect of the LHA and the one on which the Committee received most evidence. The Committee supported the continuance of direct payments to tenants as the default option “as long as the necessary financial advice and vulnerability safeguards are in place.”

Changes to the calculation of LHA rates announced in the June 2010 Budget (implemented from 1 April 2011) again focused private landlords’ concerns on the direct payment of this benefit to claimants. The Government announced some temporary flexibility for local authorities in relation to LHA payments following the reduction of LHA rates from April 2011. Guidance for local authorities on the implementation of these flexibilities was published in [HB/CTB Circular A4/2011](#).

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### 1 The legal position

Since 7 April 2008 there have been in place two systems under which a claimant's entitlement to HB can be calculated. Tenants in private rented housing who were claiming HB prior to this date are subject to the "old rules" while new tenants after this date, or tenants who experience a break in their claim of over one week or who change their address, are subject to the Local Housing Allowance rules and receive their Housing Benefit payments direct.

#### 1.1 The 'old' rules: payment of benefit

*The Housing Benefit Regulations 2006* stipulate that payment of any rent allowance (Housing Benefit) should normally be made to the person who is entitled to the allowance, i.e. the claimant. Regulations 95 and 96 state the circumstances in which payment *must* or *may* be made direct to a landlord.

The payment *must* be made to the landlord where an amount of Income Support/income based Jobseeker's Allowance payable to the claimant or their partner is being paid direct to the landlord in respect of arrears or, where the claimant has arrears of at least 8 weeks' rent, except where the authority believes that it is in the overriding interest of the claimant not to make direct payments to the landlord. Compulsory direct payments stop once the outstanding arrears are reduced to less than 8 weeks rent.

The rent allowance *may* be paid direct to the landlord where the claimant requests or consents to this arrangement, or where it is in the interest of the claimant and their family (in the local authority's view and without the claimant's consent), or where the person has ceased to reside in the dwelling on which the rent allowance is payable and where there are outstanding payments of rent (without the claimant's consent).

Authorities also have discretion to make the first payment of any new or renewed HB claim payable to the landlord or their representative but it is still sent to the claimant.<sup>1</sup> The aim of this is to avoid the possibility of a claimant misusing the first payment of HB which may cover several weeks' entitlement.

It had increasingly become the norm for landlords to require tenants who are claiming HB to agree to the benefit being paid direct to them as a condition of granting the tenancy.<sup>2</sup> The April 2000 Housing Green Paper stated that 70% of private sector landlords received direct payments of HB.<sup>3</sup> Direct payment of HB is viewed a means by which landlords can secure their rent payments.

## 1.2 Post 7 April 2008: payment of HB

Claimants that are subject to the LHA are not, as a general rule, able to opt to have this benefit paid directly to their landlord. The circumstances in which a claimant *must* still have their benefit paid to the landlord include:

- where deductions are being made from DWP administered benefits such as Income Support or Jobseeker's Allowance in respect of rent arrears; or
- where the claimant is in arrears of 8 weeks or more<sup>4</sup>

unless it is deemed to be in the overriding interests of the claimant not to do so.<sup>5</sup>

In addition, safeguards are in place with a view to protecting landlords and to stop claimants who cannot manage their rent payments from falling into arrears. These provisions enable local authorities to make payments direct to the landlord where:

- they consider that the tenant is likely to have difficulty in 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;<sup>6</sup> or
- it is improbable that the claimant will pay their rent. For example, if the authority is aware that the tenant has consistently failed to pay the rent on past occasions without good reason;<sup>7</sup> or
- a direct payment has previously been made under regulation 95 in respect of a current award of Housing Benefit;<sup>8</sup> or
- the authority considers that it will assist the customer in securing or retaining a tenancy.

The following factors, which are not exhaustive, may be considered when deciding whether direct payments should be made:

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<sup>1</sup> Regulation 96 of the *Housing Benefit Regulations 2006*

<sup>2</sup> HC Deb 7 November 2002 c635W

<sup>3</sup> *Quality and Choice: a decent home for all*, April 2000, para 5.44

<sup>4</sup> See section 5 of this note.

<sup>5</sup> See DWP, *Local Housing Allowance Guidance Manual*, April 2011, chapter 4

<sup>6</sup> Regulation 96(3A)(b)(i) of the *2006 Housing Benefit Regulations*

<sup>7</sup> Regulation 96(3A)(b)(ii) of the *2006 Housing Benefit Regulations*

<sup>8</sup> Regulation 96(3A)(b)(iii) of the *2006 Housing Benefit Regulations*

*As a safeguard.* The customer may have learning difficulties, a medical condition or educational needs that suggest that they may have difficulty in handling their own financial affairs; they may not be able to read or have language difficulties; they may suffer from drug or alcohol addiction; or have debt problems. It should be noted that the existence of any of these factors does not necessarily mean that rent should be paid directly to the landlord.

*People who are unlikely to pay their rent.* Customers may have demonstrated, through their past behaviour, that it is improbable that they will pay their rent. In these cases, a local authority may make payments direct to the landlord.

Local authorities are not obliged to make direct payments where they are not satisfied that the landlord is a “fit and proper person to be the recipient of a payment of rent allowance”. This will apply even when the criteria for a direct payment would otherwise have been met. A landlord may not be a “fit and proper person” where it is proven that they have engaged in financial impropriety. This should normally include an element of HB impropriety, such as fraud or a knowing failure to declare changes in circumstances affecting the payment of benefit. Authorities may choose to consider other areas, such as failure to pay Council Tax or business rates, but generally the lesser connection that the offence or impropriety has with Housing Benefit, the less relevant it will be.<sup>9</sup>

In response to concerns raised by landlords’ associations, Shelter, CRISIS and some local authorities, around inconsistencies in the way in which LHA safeguards were being administered, the DWP revised parts of its LHA guidance manual towards the end of 2009.

Chapters 5 and 6 of the guidance were amended to

- identify various bodies (ie Community Mental Health Teams, Leaving Care Team) as additional contacts from which to gather evidence when identifying whether a person is unlikely to pay or will have difficulty in paying their rent;
- emphasise that where a person obtains a private tenancy with assistance from a local housing authority (an LA assisted tenancy), this will often be reliable evidence that a person has had difficulties managing their rent in the past and in many cases safeguarding is likely to be appropriate;
- remove repetition of the lists of people/bodies that can be approached for evidence to make referencing easier;
- include an additional paragraph to emphasise that payments can be made to the landlord for a maximum of eight weeks whilst an LA gathers evidence to make a decision about payment direct to the customer’s landlord; and
- stress that there is no requirement for a customer to reach eight weeks’ rent arrears before a LA can make direct payments to the landlord under the safeguard provisions.<sup>10</sup>

In addition, DWP HB/CTB Circular A26/2009 advised:

- The evidence gathering process should begin as soon as there is reason to believe that the safeguards may apply. As this process may take some time consideration

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<sup>9</sup> DWP, [Local Housing Allowance questions and answers](#)

<sup>10</sup> HB/CTB Circular A26/2009

should always be given to making payment to the landlord for up to eight weeks until the decision is reached.

- A date should be set within twelve months to review a decision to pay direct to the landlord.
- The claimant, the landlord and any person affected by the outcome of a decision regarding direct payment should be sent written notification of the decision and rights of appeal against that decision.

Guidance on when a direct payment of LHA can be made to the tenant rather than the landlord has been consolidated into chapter 4 of the [Local Housing Allowance Guidance Manual](#) (April 2011).

The Government announced some significant changes to the calculation of LHA rates as part of the June 2010 Budget and the October 2010 Spending Review (see SN/SP/5638). These changes, which began to be implemented in April 2011, have reduced LHA rates leading to further concerns amongst private landlords over the possibility of rent shortfalls and arrears.

The changes to the LHA from April 2011 were considered by the Social Security Advisory Committee (SSAC). The [SSAC's report](#), together with the Government's response, was issued at the end of November 2010. The SSAC recommended that the DWP and Communities and Local Government should work together to "explore measures to encourage landlords to stay in/enter the LHA market, including wider availability of direct payment within the current benefits system and within the proposed Universal Credit." In response, the Government announced some increased discretion for local authorities in respect of direct payments:

The Government intend that the measures they are introducing to adjust local housing allowance rates will act to reduce rents in the private rented sector. To support this, the Government are temporarily widening the discretion of local authorities to make direct payments to the landlord in some circumstances where it will support tenants in retaining or securing a tenancy. The Government will work closely with local authorities to ensure this provision is used only in very specific circumstances where landlords are reducing rents to a level that is affordable for claimants.<sup>11</sup>

Guidance for local authorities on the implementation of these flexibilities in relation to direct payment of LHA was published in [HB/CTB Circular A4/2011](#).

Lord Freud, Minister for Welfare Reform, confirmed, in an article for *Inside Housing* magazine that the flexibilities on offer to landlords over direct payments would last for "around two years."<sup>12</sup>

Despite these increased flexibilities, the Minister, Steve Webb, made it clear that the Government has "no plans to return to a system where tenants can simply choose to have their benefit paid to the landlord."<sup>13</sup>

## **2 Direct payments in the pathfinder authorities**

On 17 October 2002 Andrew Smith announced plans for a new form of HB which would no longer be directly linked to rent levels. From November 2003 this new approach was piloted

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<sup>11</sup> HC Deb 30 November 2010 c72WS

<sup>12</sup> *Inside Housing*, "Welfare reform is necessary to create a better future for all", 1 April 2011

<sup>13</sup> HC Deb 30 November 2010 c793W

in nine pathfinder areas and was extended to a further nine areas from April 2005. The original nine pathfinder areas included: Brighton & Hove City Council; City of Edinburgh; County Borough of Conwy; Coventry City Council; Leeds City Council; London Borough of Lewisham; North East Lincolnshire; Teignbridge District Council; and Blackpool Borough Council. The areas selected to take part from April 2005 included: Argyll & Bute, East Riding of Yorkshire, Guildford, Norwich, Pembrokeshire, Salford, South Norfolk, St. Helens, and Wandsworth.

Within these pathfinder areas, alongside the move to paying a flat-rate standard Local Housing Allowance (LHA) based on area and family size, there was a move away from paying HB direct to landlords.<sup>14</sup> The then Government argued that this would increase the personal responsibility of claimants:

The Government wishes to move away from the current HB system where most customers have their benefit paid directly to their landlord, which means that they have no personal responsibility for their rent and many are unaware of how much rent is actually paid on their behalf.

By paying LHA direct to the customer it ensures they take on the personal responsibility of paying the rent to the landlord and helps develop the budgeting skills unemployed people will need when they move into the workplace.

It also plays a part in the wider cross Government strategy of greater financial inclusion. The Government also believes that wherever possible LHA should be paid to customers, as is the case for most other benefits and tax credits.<sup>15</sup>

Safeguards were kept for vulnerable claimants and for landlords where tenants fell into arrears. Malcolm Wicks was questioned on how these vulnerable claimants would be identified in the pilot areas:

**Malcolm Wicks:** Tenants in the pilot areas will have their rent paid to them rather than to their landlord. However, we appreciate that not all tenants will be able to cope with this responsibility. For this reason safeguards will be in place to ensure that landlords and vulnerable tenants are protected. For example, as now, where it is considered appropriate, the pathfinder authority will be able to make the first payment of benefit direct to the landlord. And in cases where 8 weeks' rent arrears have built up, payments of Housing Benefit will be made to the landlord. In addition, certain groups of vulnerable tenants--such as those living in hostels--will not be included in the standard.

The pathfinders ran for around 2 years; the results were analysed and ultimately the Government reached a decision to roll-out the LHA nationally and with it the direct payment of HB to claimants. Provision for the introduction of the LHA was made in the *2007 Welfare Reform Act*.

### 3 Pathfinder experiences

A full evaluation of the progress of the LHA and direct payments in the Pathfinder areas was carried out by a consortium of leading research universities with experience in the field. All the evaluation reports can be accessed online at:

<http://www.dwp.gov.uk/local-authority-staff/housing-benefit/claims-processing/local-housing-allowance/evaluation/pathfinders/>

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<sup>14</sup> The pilots only affected landlords and tenants in the deregulated private sector.

<sup>15</sup> DWP, [Local Housing Allowance questions and answers](#)

The final evaluation report on the implementation and delivery of the LHA in the Pathfinder areas found:

...a marked increase in the percentage of claimants receiving the LHA direct in all of the Pathfinders between the authorities' respective going live dates (Baseline) and November 2004 when all eligible claimants had been transferred onto the LHA and between Baseline and February 2006. It is the case that the percentage of claimants receiving payment direct has not increased in any Pathfinder between November 2004 and February 2006, and has reduced somewhat in most. This may reflect the emergence of vulnerability and payment issues over the Pathfinder period, and the ways in which the authorities have dealt with these.<sup>16</sup>

The LHA regulations make provision for the direct payment of HB to landlords where the claimant is vulnerable and "unlikely to pay their rent" or are "unable to manage their affairs". A key concern of authorities had been how they would identify vulnerable claimants. The final evaluation report noted:

Vulnerability decisions and reviews are time consuming and absorb additional resources. This is despite the finding from Table 3.1 above which showed that the great majority of claimants receive direct payment, suggesting that, in all Pathfinders, it is only a minority of the caseload that is involved. However, some participants argued that the amount of work involved in deciding on vulnerability requests is disproportionate to the number of cases with which they have to deal.

That dealing with vulnerability under the LHA is a resource intensive role was observed by many participants. This does not necessarily mean that there is currently widespread resentment on the part of officers in the Service at having to undertake this new task. All saw it as an important and worthwhile, and acknowledged the importance and sensitivity of the decisions that had to be made. As noted in para 6.8 above, some Pathfinders – Brighton & Hove is an example – positively welcome the vulnerability provisions as enabling the Benefit Service to participate in furthering their authority's wider objectives in respect of social inclusion.<sup>17</sup>

In respect of rent arrears the final evaluation report on implementation and delivery found that an "overwhelming majority" of claimants in receipt of direct payments of HB were not accruing serious arrears of rent (i.e. eight weeks worth of rent or more). However, a note of caution was sounded:

However, this latter finding needs to be treated with caution because in the great majority of Pathfinders the Benefit Services have procedures intended to prevent arrears reaching the eight weeks level. One way of mitigating the danger of non-payment and arrears is the policy of paying landlords – usually by a cheque made out to the landlord and sent to the tenant's address – when a claimant in receipt of direct payment is entitled to a particularly large payment, usually the first payment under the claim, but also often the last payment under the tenancy. HB administrators argue that making large payments in this way reflects the requirement of the LHA regime to pay the claimant, since the claimant must then pass the cheque to the landlord in the same way as they would have had to get their rent to the landlord if the payment was in their name. It also offsets landlords' liabilities in the event of overpayments being made.

More generally, across the Pathfinders, checking the accuracy of large payments and to whom they are to be paid has become a much more high profile task than under the

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<sup>16</sup> <http://www.dwp.gov.uk/docs/lha-report-10.pdf>

<sup>17</sup> *ibid*

previous regulations because of the potentially major effects on all parties of a claimant receiving a large payment and not using it to pay their rent.

Further, the Benefit Service majority of Pathfinders is prepared to intervene by investigating and where necessary switching payments to landlords before the arrears reach the eight weeks level. Such early intervention is intended to prevent serious arrears arising and, explicitly in some Pathfinders, to protect landlords, many of whom predicted that non-payment of rent by direct payment recipients would be a major problem under the LHA. Coventry is an exception here – the Service will not switch payments to landlords until there is evidence that eight weeks arrears have been accrued, which may explain why this reason figures relatively highly as a reason for making payments to landlords in this authority.

The early intervention strategies in respect of arrears allegations means that in Blackpool, for example, the Benefit Service will begin to act once two missed rent payments, or sometimes only one, are reported, while Edinburgh will act after one month's rent has not been paid. In Conwy, where, at some administrative cost, the LHA is paid weekly in an attempt to reduce problems of overpayment, the Benefit Service is willing to act after two such payments are missed. As a result in Blackpool's case, over the evaluation period 60 percent of all payments to landlords were made on the grounds of arrears while at the same time very few ever reached the level of eight weeks rent or more – indeed, Table 6.1 shows that no payments were being made for this latter reason in February 2006.<sup>18</sup>

Despite the evidence on actual arrears accruing in the Pathfinder areas [the final evaluation report on landlords and agents' experiences in the Pathfinder areas](#) found:

Overall HB/LHA tenants are unpopular with landlords and lettings agents and in particular some landlords cited the introduction of LHA as increasing their reluctance towards letting to HB/LHA tenants. However the research also shows despite the introduction of the LHA there has been a net increase in the overall number of properties owned by letting agents and landlords.

The proportion of landlords reporting arrears over the Pathfinder period did not vary between Pathfinder and Control LAs (65%). However it was more common for Pathfinder landlords/letting agents to think that LHA recipients were more likely than HB tenants under the previous arrangements to fall into arrears.

Most landlords and letting agents thought processing times under the LHA were either the same or had improved (83%). Processing of safeguard decisions are however considered much slower.

Also the greater transparency offered through the simplicity and publicising of LHA rates have not had the feared knock on effect of inflating rents. Though rents have increased in the Pathfinder areas they have not increased anymore than in Control areas suggesting that LHA is not the cause of the increase.<sup>19</sup>

The final evaluation report on claimants' experiences of the LHA and direct payments found that a majority of claimants prioritised their rent payments:

Evidence from the sample points to the fact that it is very unusual for claimants to get into rent arrears when they are being paid HB (this mirrors the finding in the Wave 2 Survey Report (Roberts *et al.*, 2006)). Paying the rent is seen as a matter of prime importance and claimants appeared to hold the view that it represented such a large

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<sup>18</sup> *ibid*

<sup>19</sup> <http://www.dwp.gov.uk/docs/lha-report-11.pdf>

amount of their income that should they fall behind with it, catching up would prove very difficult indeed. Generally, they made statements, such as, they would rather not eat, or would use a credit card (where one was possessed) rather than default on the rent.

In general, therefore, claimants did not use the HB payment for any other purpose than paying the rent. They seemed aware of the risk of 'accidentally' spending the LHA as it 'sits' in the bank account but by dint of organisation, 'willpower' or being 'quite good with money', (although the HB was not kept separately), it generally remained untouched except for the purpose for which it was intended – to pay the rent. However, a small minority (of those who were not in arrears) occasionally borrowed from the payment and then – replaced it; using it as a flexible source of money (rather like a credit card). This was, however, very unusual.<sup>20</sup>

## 4 Comment on the ending of direct payments

### 4.1 Prior to implementation

Prior to the piloting of direct payments to tenants commentators emphasised that the ending of direct payments to landlords (except in certain cases) would mean that HB assessments must be accurate, speedy and consistent. Sam Lister of the Chartered Institute of Housing said that if a claim took 26 weeks to process and the tenant received a cheque for over £2,000 and disappeared with it, 'that would be a problem.'<sup>21</sup> The Government conceded in the April 2000 Housing Green Paper that ending direct payments would open up the risk of some tenants choosing not to pay their rent: 'this would cause arrears to build up, affecting the finances of landlords and, at the extremes, leading to eviction and possible homelessness for tenants.'<sup>22</sup>

Alternatively, the case for removing direct payments had been made many times when considering options for reforming the HB system. In *Housing Benefit: what the Government ought to do – but won't*, Dr Peter King said:

As we have seen, the majority of tenants do not receive a monthly housing benefit. Instead, payments are sent direct to their landlords. Thus for tenants receiving full housing benefit, rent levels are a matter of indifference. They need not be aware of the rent they are charged and need not develop a close relationship with their landlord.

The key issue though is that by-passing the tenant gives landlords some control over housing benefit, through their ability to set rent levels. They may also have an incentive to allocate dwellings to housing benefit recipients, since this guarantees their income. They are therefore able to 'milk' the system and, certainly in the case of local authorities before 1996 and housing associations, use housing benefit as *de facto* supply side subsidy.

A reformed benefit system should attempt to break this producer capture. This can be done by making all payments to applicants and not their landlords. Landlords should not be able to receive benefit payments direct, but only from their tenants.

This would re-establish personal responsibility on the part of the tenant and dramatically re-shape the power relations between landlords and tenants. Landlords would have to deal directly with tenants based on their contractual obligation. It would

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<sup>20</sup> <http://www.dwp.gov.uk/docs/lha-report-13.pdf>

<sup>21</sup> *Inside Housing*, 'Tenants on benefits will have to shop around for low rents', 24 October 2002

<sup>22</sup> *Quality and Choice: a decent home for all*, April 2000, para 11.79

also make rent levels a significant part of that relationship again, in that landlords would have to consider the response of tenants to rent increases...

There is also the important point that households would become more aware of the real cost of their housing. This, of course, is an important prerequisite if rational choices between available dwellings are to be made. Payments direct to the landlord ensure that rent levels are a matter of indifference to benefit recipients. Prohibiting the landlord from receiving payments direct would ensure that rent levels are relevant to households. This awareness of cost should serve to prevent 'up-marketing' and allow a more genuine market to develop.<sup>23</sup>

Dr King rejected the argument that tenants may not use HB for the purpose for which it is paid as "essentially paternalistic:"

It assumes that tenants are not competent to manage their own affairs and thus should not be trusted to use their income responsibly. However, the outcome of such an approach, which has been held in housing policy for many years, is precisely to remove responsibility from individuals and to create the shortcoming which is assumed.<sup>24</sup>

A baseline survey to collect 'benchmark' information on the characteristics and attitudes of the private landlords and agents in the nine original pathfinder areas found the following results in relation to direct payments:

- A particular concern regarding the implementation of LHA is the matter of housing benefit being paid direct to tenants. More than eight in ten of the survey respondents said that they preferred housing benefit to be paid directly to themselves rather than to their tenants, and amongst the small minority of landlords who preferred to let to housing benefit tenants this was most commonly because they could receive the benefit directly.
- Almost one half of respondents who had let to housing benefit tenants within the past two years had in fact made payment of the benefit directly to themselves a condition of a tenancy.
- Not surprisingly, therefore, almost two thirds of landlords and agents thought that they would be less likely to want to let to housing benefit tenants if they were no longer able to receive payments of housing benefit directly.<sup>25</sup>

Prior to the LHA's introduction in the Pathfinder areas the National Federation of Residential Landlords warned that the removal of direct payments to landlords would deter them from letting to HB claimants:

Nobody's been consulted as landlords on this. Landlords who aren't allowed to have the rent direct, where they can have a choice, will not accept housing benefit tenants and therefore the choice to tenants will go down.<sup>26</sup>

The Association of Residential Letting Agents (ARLA) also pointed out that rules allowing councils to claw back HB overpayments from landlords, together with the payment of HB in arrears, would act as major deterrents to private landlords.<sup>27</sup>

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<sup>23</sup> Dr Peter King, Adam Smith Institute, 2000, p 21

<sup>24</sup> *ibid*, p 22

<sup>25</sup> *Landlords and Agents in the nine LHA pathfinders: summary report*

<sup>26</sup> 'Curbs to rent direct will deter private landlords', *Inside Housing*, 8 November 2002

The Regulatory Impact Assessment (RIA) on the *Welfare Reform Bill 2006-07* said that private landlords had expressed their opposition to making payments to tenants: “not only would their rent now not be guaranteed if tenants fall into arrears, they would also incur additional rent collection costs.”<sup>28</sup> The RIA estimated the likely cost of defaults to landlords to be between £2.5-£4 million a year once the LHA was rolled-out to all private tenants; representing £5 per tenant receiving the LHA.<sup>29</sup> On rent collection costs, the Government argued that these were a legitimate responsibility of landlords – the additional rent collection and rent management costs for landlords were estimated to be in the region of £4m to £6m a year; representing a cost to landlords of £7 per tenant per year.<sup>30</sup> The RIA said that the national LHA scheme would take landlords’ concerns into account by including discretionary and mandatory safeguards to enable local authorities to make payments direct to landlords where appropriate.

Research published by the Joseph Rowntree Foundation in May 2007 on claimants’ views and experiences of HB payment in the context of household budgeting, attitudes to rent paying and the proposed introduction of the LHA, concluded, with few exceptions, that most claimants preferred the arrangements that they had in place, whether payment to them or to their landlord.<sup>31</sup>

## 4.2 Post implementation

In May 2008 Shelter published *Shelter’s input into the review of the private rented sector* in which it highlighted concerns over the direct payment of the LHA to tenants:

Shelter also remains concerned about the direct payment element of the new LHA arrangements. Recent anecdotal evidence has highlighted that some landlord organisations are advising members not to let to LHA claimants because of the perceived risks of the move to direct payments. We are also concerned that DWP’s guidance to local authorities does not place a requirement on LHA staff to be proactive in identifying someone as potentially vulnerable and consider that this should be a minimum requirement for the administration of LHA.<sup>32</sup>

Additional research by Shelter involved contacting over 100 landlords across four Broad Market Rental Areas and recording their reaction to an enquiry from a LHA claimant. Shelter found a high proportion of landlords were reluctant to let to LHA claimants.<sup>33</sup>

*Inside Housing* magazine of 24 April 2009 reported on a survey conducted by the homelessness charity, Crisis, in which 180 councils and voluntary organisations were surveyed on the impact of the LHA. 82 per cent of respondents said claimants were falling into arrears or having their tenancies ended as a result of direct payments. A further development involved tenants with overdrafts having their LHA payments “swallowed up” or “frozen” when paid into their accounts, leaving tenants unable to pay their rent.<sup>34</sup>

The May/June 2009 edition of *UK Landlord Magazine* carried an article entitled “Local Housing Allowance is not working” in which it highlighted landlords’ difficulties in ensuring prompt rent payments as a key concern. According to research by the National Landlords’

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<sup>27</sup> ‘Incentives to shake-up benefit’, *Inside Housing*, 18 October 2002

<sup>28</sup> *Welfare Reform Bill: Regulatory Impact Assessment*, p.28

<sup>29</sup> *ibid* p.32

<sup>30</sup> *ibid*

<sup>31</sup> JRF, *Paying Housing Benefit to Claimants*, May 2007

<sup>32</sup> Shelter, *Shelter’s input into the review of the private rented*, 2008

<sup>33</sup> *Roof Magazine*, “In the LHA ghetto”, March/April 2009

<sup>34</sup> *Inside Housing*, “Banks freeze tenants’ accounts”, 24 April 2009

Association (NLA) 52 per cent of its members responding to a survey said that the LHA had made them less likely to let to new Housing Benefit claimants. There is a lack of confidence that tenants will pass on rent payments to them and a recognition that sometimes this is beyond the tenant's control (i.e. where banks use the money to clear an overdraft). The article raised the issue of potential homelessness:

Many landlords rely on prompt rental payment to meet mortgage commitments. If the rent is not paid, resulting in mortgage arrears, then repossession becomes a possibility. This places tenants at risk of eviction and homelessness.<sup>35</sup>

The NLA called on the Government to:

...restore the old housing benefit rules and direct their energies to making the system work correctly. If this is not possible, politically, they urgently need to make some important changes to the way Local Housing Allowance is administered.<sup>36</sup>

The changes the NLA said it would like to see included:

- More flexibility/discretion for authorities to pay rent to landlords from the outset of the claim.
- A reduction in the period of the accumulation of arrears which prompts automatic direct payment to landlords from eight to four weeks.
- Greater links between local authorities and local deposit guarantee schemes so that each new LHA application is accompanied by a deposit guarantee bond.
- A requirement on local authorities to apply consistent criteria in determining tenants' support needs, particularly when assessing vulnerability.

In June 2009 the Labour Government responded to a PQ requesting a review of the rules on direct payments with a view to allowing local authorities more flexibility:

**Mr. Burstow:** To ask the Secretary of State for Work and Pensions if he will review the rules governing the payment of housing benefit to landlords to allow greater flexibility.

**Kitty Ussher:** Local housing allowance was rolled out nationally in April 2008 for customers in the deregulated private rented sector who make a new claim for housing benefit, and for existing customers who move address. It is a way of calculating the rent element of housing benefit based on the area in which a customer lives and their household size. Local housing allowance is paid to the tenant rather than the landlord in most circumstances.

We believe that local housing allowance is a much fairer, simpler and more transparent way of calculating housing benefit. One of the key features of local housing allowance is that where possible the benefit will be paid to the customer, so that they can take more personal responsibility for their housing, helping to prepare for when they move into work.

We accept that it is not possible in every case to make the payment to the tenant and, once the local authority has determined a maximum rent in accordance with the relevant regulations, payments are therefore made to the landlord in the following circumstances:

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<sup>35</sup> UK Landlord, *Local Housing Allowance is not working*, May/June 2009

<sup>36</sup> *ibid*

- when the tenant is unlikely to pay (for example, where the local authority knows from past experience that the tenant is likely to abscond with the rent payment); or
- when the tenant is likely to have difficulty in managing their rent payments; for example, due to an alcohol/gambling/drug dependency or because of a serious medical condition such as Alzheimer's disease; or
- when the tenant is in arrears of eight weeks or more.

Local authorities may make payments to the landlord where they consider that the claimant is likely to have difficulty in paying their rent and it is in the interest of the claimant to do so. We therefore encourage landlords not to wait for the eight-week period to be reached but to contact the local authority as soon as a payment is missed so that they can begin gathering the evidence required to make a decision on direct payment.

We are satisfied that these safeguards will ensure that vulnerable customers do not fall into unmanageable difficulties and that their rental payments will be met.

Local housing allowance was introduced in nine pathfinder authorities in 2003-04 and was subject to extensive and independent evaluation. A further nine authorities implemented the scheme in 2005 to test operational readiness.

Despite landlords' initial fears, there is overwhelming evidence that customers have responded extremely well to the responsibility of managing their rent payments. Evidence from the evaluation has shown that customers regard paying the rent as a matter of prime importance and that most would prioritise this above all other payments. 84 per cent. of tenants are successfully managing their own housing benefit. Of the remaining 16 per cent. only a third are having their housing benefit paid to the landlord because they have fallen into arrears of eight weeks or more. Two-thirds are having their benefit paid to the landlords because the local authority, working together with landlords, has identified that they might not be able manage their rent payments. The local housing allowance evaluation reports are available on the DWP website at:

<http://www.dwp.gov.uk/local-authority-staff/housing-benefit/claims-processing/local-housing-allowance/evaluation/>

We are closely monitoring how the local housing allowance scheme is working in practice and will undertake a review during the first two years of operation following national rollout.<sup>37</sup>

On 10 November 2009 Helen Goodman responded to a similar PQ concerning the impact of direct payments:

We are satisfied that these safeguards will ensure that customers do not fall into any unmanageable difficulties and that their rental payments will be met. The Department is closely monitoring how the local housing allowance is working in practice and is undertaking a wide ranging review of the scheme over its first two years.<sup>38</sup>

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<sup>37</sup> HC Deb 2 June 2009 cc387-8W

<sup>38</sup> HC Deb 10 November 2009 c296W

As noted in sections 1.2 and 5 (below) of this note, the DWP revised parts of its LHA Guidance Manual to respond to some of the concerns raised by landlords and bodies such as Shelter and CRISIS, in December 2009.<sup>39</sup>

The Work and Pensions Select Committee carried out an inquiry over 2009-10 on the Local Housing Allowance which considered, amongst other issues, the impact of the direct payment of HB to tenants. While submissions from landlords indicated that problems with rental payments had increased, others, such as the Centre for Research in Social Policy at Loughborough University, found that all but a few claimants “were managing their rent and making payments to their landlord.” The Committee concluded that evidence on the effect of direct payments on rent arrears was “mixed” and recommended that the DWP should carry out an in-depth study to gain a clearer picture of the scale of the problem.<sup>40</sup> While recognising that direct payments were the most controversial aspect of the LHA, the Committee supported direct payments to tenants as the default option “as long as the necessary financial advice and vulnerability safeguards are in place” –

Managing one’s own finances is an important step towards personal responsibility and financial inclusion and, through this, readiness for work. There is evidence that giving tenants the choice of having rent either paid to them or the landlord would defeat this important objective of the scheme and help perpetuate benefit dependency.<sup>41</sup>

Evidence submitted to the Committee also raised issues around the lack of consistency amongst authorities in identifying potentially vulnerable claimants at an early stage (these clients can continue to have their rent paid direct to the landlord):

105. Shelter research into practice at around 50 local authorities has found a lack of consistency across local authorities in defining vulnerability, as well as disparities in the application process and accessibility of information and guidance.<sup>109</sup> Shelter states that a DWP survey found that only 55% of local authority staff had received any training to make determinations about whether a claimant needed safeguards to be applied to their case.

[...]

107. The National Landlords Association states that lack of transparency and consistency both across and within authorities in identifying vulnerable claimants is inadequate for two reasons: “Landlords typically have to deal with more than one local authority and are left confused by procedures and rules that vary for no explicit reason; and it is unclear whether local authorities are taking into account current best practice in determining their local procedures”.<sup>42</sup>

The then Minister advised the Committee that while the aim was to enhance personal responsibility, there was a need to identify vulnerable people and the Government wanted to ensure that local authorities have the tools at their disposal to do this as well as possible. He made reference to issuing best practice guidance to authorities. The Committee welcomed this assurance and emphasised that the onus should not be on the claimant to inform the authority that they are vulnerable.<sup>43</sup>

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<sup>39</sup> HB/CTB Circular A26/2009

<sup>40</sup> Work and Pensions Select Committee, Fifth Report of 2009-10, *Local Housing Allowance*, HC 235, March 2010, para 95

<sup>41</sup> *Ibid* p3

<sup>42</sup> *ibid*

<sup>43</sup> *Ibid* paras 113-114

The Committee also highlighted the need for authorities to use their discretion over how to pay LHA to claimants as not all are able to open bank accounts. The Committee supported arrangements that would allow LHA to be paid into the Post Office Card Account.<sup>44</sup>

The Committee called for the first payment of LHA (which is paid in arrears) to be sent in a cheque to tenants but payable to the landlord to “give the tenant time to get used to the new scheme and provide the landlord with some confidence in receiving the payment.”<sup>45</sup> It also called on the DWP to review the payment cycles of LHA “to avoid unnecessary burden on claimants and to reinforce the financial capability agenda.”<sup>46</sup>

Submissions to the Committee argued that the dedicated funding for financial advice to claimants in the pathfinder areas had not continued after the national roll-out and that “the absence of specific funding arrangements has undoubtedly prevented a more dedicated support service aimed at arrears prevention from being developed.”<sup>47</sup> The Committee recommended monitoring of the need for additional advice services to help claimants.<sup>48</sup>

The Residential Landlords Association (RLA) submitted evidence to the Work and Pension Select Committee’s 2010-11 inquiry into cuts to the LHA (announced in the June 2010 Budget and October 2010 Spending Review) in which it highlighted the “lack of a level playing field” between the private and social rented sectors in terms of policy over paying Housing Benefit direct to claimants. In the social sector council and housing association tenants do not receive Housing Benefit payments directly, although this will change with the introduction of the Universal Credit (see section 7 of this note). The social sector has argued strenuously against any such moves because of the potential impact that this might have on their rental streams. The RLA argued:

We and our members strongly feel that there should be the same rule for the public/social sector as the PRS. If promoting financial responsibility is so important why does the Government not apply this to the public/social sector? Obviously, it does not because it is fearful of the same loss of income as the PRS is suffering. So far as landlords and the PRS are concerned they are frequently small business people. The average number of houses rented to LHA tenants by respondents to our survey is just over 8. Significant arrears can be built up very quickly in respect of just one property; several thousands of pounds, before it is possible to evict the tenant. Added to this you have the void costs and the cost of finding a new tenant. This can be financial disaster. Unfortunately, bank managers are not prepared to wait. Just one tenant being in arrears can have a disproportionate effect.<sup>49</sup>

The Work and Pensions Select Committee’s Report was published in December 2010.<sup>50</sup> The Committee welcomed the Government’s announcement of more flexibility around direct payments for a temporary period:

179. Some landlords may be willing to reduce rents in return for better security of payment, and landlords also stressed that direct payment would improve their confidence in the Housing Benefit market. It is likely that this would also increase the

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<sup>44</sup> *Ibid* paras 68-70

<sup>45</sup> *Ibid* para 73

<sup>46</sup> *Ibid* para 78

<sup>47</sup> *Ibid* para 83

<sup>48</sup> *Ibid* para 86

<sup>49</sup> RLA *Briefing on Local Housing Allowance Changes*, October 2010

<sup>50</sup> HC 469, Work and Pensions Committee, Second Report of 2010-11, [Changes to Housing Benefit announced in the June 2010 Budget](#), December 2010

supply of private rented housing for Housing Benefit tenants. Direct payment to landlords could therefore be a useful bargaining tool for local authorities in trying to secure cheaper accommodation for clients. In that context, we welcome the Government's recent announcement that it would temporarily widen the discretion of local authorities to make direct payments to landlords who are willing to reduce rents to a level that is affordable for claimants.

180. We note the important principles behind payments to claimants as supported by our predecessors. The Government's plans to introduce a Universal Credit, bringing together in and out of work benefits, will rely on Housing Benefits being paid direct to the claimant. We believe that, both to retain this important principle and to help build landlord confidence in the sector, the Government should promote good practice schemes such as LetFirst in Edinburgh which brings together direct payments to the claimants and rental guarantee for the landlord.<sup>51</sup>

The LHA was subject to a [two year review](#) which reported in February 2011.<sup>52</sup> The review found that a majority of tenants were paying their rent direct to their landlords:

A high level of direct payments of benefit to claimants has been achieved under the LHA system. In February 2010, 81 per cent of LHA cases were receiving direct payments compared to 46 per cent of non-LHA cases in the PRS. A similar pattern of payment destinations appears to have prevailed for both groups over the whole period from November 2008 to February 2010.

Estimates based on the administrative data suggest that in February 2010, for about eight per cent of the LHA caseload payment was made to the landlord due to the operation of the eight week arrears rule and for about 11 per cent due to the "unlikely to pay" or "difficulty paying" safeguards. Other claimants who have had payments transferred to the landlord, but not as a result of the eight week arrears rule, may also have had arrears. Furthermore, tenants still receiving payments themselves may also be in arrears without payment having been redirected to the landlord. Unfortunately this review is unable to quantify this with the evidence available.<sup>53</sup>

The review found "a general agreement" amongst landlords that the LHA had had some negative impact on rent arrears. A third of local authorities also thought that rent arrears had increased a little<sup>54</sup> while advisors thought that a majority of tenants were managing their payments aside from a "significant minority."<sup>55</sup> In summary the review found:

Evidence on financial management of tenants was mixed. Some positive views were expressed suggesting that tenants took the responsibility of paying rent very seriously, but concerns were raised about a 'significant minority' of tenants who were not managing.

Many tenants, landlords and LA and independent advice agency advisers raised concerns over the success of the safeguards in protecting tenants in vulnerable situations. Eight weeks was considered too long a period to wait to transfer payments to landlords. Generally, evidence showed a lack of awareness and difficulties in

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<sup>51</sup> *Ibid* paras 179-180

<sup>52</sup> DWP, [Two year review of the Local Housing Allowance](#), February 2011

<sup>53</sup> *Ibid* paras 15 & 16

<sup>54</sup> *Ibid* para 37

<sup>55</sup> *Ibid* para 38

providing acceptable supporting evidence for the discretionary safeguards. However, we are unable to suggest how widespread these issues were.<sup>56</sup>

The findings of the review can be contrasted with surveys carried out by the RLA:

Previous RLA surveys show that 90% of landlords of those who are on LHA benefits had to apply for direct payments because the tenant was more than 8 weeks in arrears. 97% of all respondents support the change back to the old position.<sup>57</sup>

The British Property Federation (BPF) submitted evidence to the Welfare Reform Public Bill Committee in May 2011 in which it was highly critical of the protections against rent arrears offered to landlords letting to LHA claimants, including the additional flexibilities offered in response to reduced LHA rates from April 2011:

Government's policy towards small and medium sized business is to stress the importance of prompt payment, but for small landlords, who are paid via the LHA system, it insists on them waiting until the tenant is eight weeks in arrears before the landlord can ease losses by being paid direct. We believe rent arrears protection needs to be improved by allowing landlords to request direct payment of LHA to them as soon as rent arrears occur, rather than having to wait up to eight weeks of arrears; and by giving tenants the choice to request their LHA be paid direct to landlords.

[...]

Whilst there may be a lack of detailed statistics on the total value of rent arrears, DWP research indicates that there are around a million LHA tenants and that 8 per cent are seeing their landlord receive direct payment because of their arrears, which equates to around 80,000 tenants. Based on an average LHA payment in the PRS of £113 per week, arrears could total about £72 million if those landlords had to wait eight weeks before claiming payment direct to themselves.

The Government has recently introduced a policy of offering direct payment to landlords where they accept a reduction in rent to "affordable" levels which in the vast majority of cases will be the LHA rate which applies to the customer, and on which their maximum rent determination is based. We not only question the principle of bartering with a right to be paid for a service, but also note the likely limitations of this provision. The DWP's 2 Year LHA research shows that in 49 per cent of LHA cases, landlords are charging in excess of the LHA rate and in 43 per cent below the LHA rate, with 8 per cent at the LHA rate. For tenants who are paying in excess of LHA rates the mean additional amount they pay is £24 per week. Thus based on these figures, landlords currently letting above the LHA rate are potentially being asked to offer a vast prompt payment discount of 21% when set against the average LHA rent in the PRS of £113 per week. Furthermore, this discount is based on figures from last year's LHA rates, before the LHA reductions implemented from April 2011 and so the expected discounts in return for direct payment will be far more dramatic and even less likely to be feasible.<sup>58</sup>

In April 2013 *Inside Housing* reported that English housing survey data prepared by LSL Property Services showed an increase of 4,000 private sector tenants with severe arrears (more than two months behind on rent) across England and Wales between January and March 2013, giving a total number of households in arrears within the sector of 94,000:

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<sup>56</sup> *Ibid* paras 14 & 15

<sup>57</sup> HC 469, Work and Pensions Committee, Second Report of 2010-11, [Changes to Housing Benefit announced in the June 2010 Budget](#), December 2010, Ev87

<sup>58</sup> [BPF Submission to the Welfare Reform Public Bill Committee](#), May 2011

Figures for tenants facing court-ordered eviction have also gone up by more than 10 per cent between the last quarters of 2011 and 2012, according to the property group. This is the highest level ever recorded by the LSL Property Services equating to 25,286 tenants evicted in last quarter of 20.<sup>59</sup>

Not all of the tenants in this survey were LHA recipients.

The Government committed to an independent review of the impact of changes to the LHA which were introduced from April 2011. An interim report published in May 2013 contains findings from a mixture of quantitative and qualitative elements: interviews with landlords undertaken between November 2011 and January 2012; claimant interviews undertaken in early 2012; and interviews with front line housing and benefits advisors between May and June 2012.<sup>60</sup> Although direct payments are not central to this evaluation work their impact is referred to:

Nearly all landlords interviewed, however, did not see the move to direct rent payments as sufficient incentive to negotiate over rents.<sup>61</sup>

[...]

It is important to note that the issues on the horizon that shape future landlord behaviour most may not stem directly from the ripple effects of LHA measures but from one or more of three other factors: even a slight increase in interest rates would, according to many respondents, place intolerable pressure on margins and force some out of the market if increasing rent levels was not an option; the perceived shift towards HB being paid direct to the tenant rather than the landlord was seen as introducing further uncertainty into the reliability of future income streams; and many landlords were very nervous about the introduction of Universal Credit from autumn 2013 onwards, and what they saw as the end of a discrete benefit to pay for the rent.<sup>62</sup>

[...]

Advisers felt that the incentive to landlords of receiving HB direct in exchange for reducing rent had a negligible impact – whether because landlords thought they could receive direct payments from the LA without much difficulty in any case, or because they would let to a non LHA tenant to ‘avoid hassle’.<sup>63</sup>

## 5 Rent arrears: advice for landlords

If 8 weeks’ rent arrears have built up a local authority will arrange to make payments direct to the landlord unless it is not in the customer’s overriding interest to do so.

However landlords are encouraged not to wait for the 8 week period to be reached before contacting the local authority. The 8 week provision is significant as under Schedule 2 of the Housing Act 1988 (as amended by the Housing Act 1996) a landlord may be able to terminate an Assured Shorthold Tenancy Agreement when at least eight weeks rent is unpaid and the rent is payable weekly or fortnightly.<sup>64</sup>

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<sup>59</sup> Inside Housing, “*PRS tenants in severe arrears rises*,” 4 April 2013

<sup>60</sup> DWP, *RR 838 Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit: Interim report*, 2013

<sup>61</sup> DWP, *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit: Summary*, 2013, p4

<sup>62</sup> *Ibid*

<sup>63</sup> *Ibid* p5

<sup>64</sup> DWP, Local Housing Allowance questions and answers

The 8 week period triggers mandatory payments to the landlord; it is possible for authorities to exercise their discretion to pay benefit to the landlord before this trigger point is reached. When giving evidence to the Work and Pensions Select Committee the Minister said:

[...] the local authority should be alert to any signs of rent arrears, and of course the landlord is perfectly at liberty to tell the local authority as soon as there are signs of any trouble and, at the outset of a claim, of course the local authority can pay the landlord while the investigations are taking place on the safeguards, so I think there are quite a few procedures in place to ensure that there is an approach taken by the local authority that will help prevent serious arrears mounting.<sup>65</sup>

Some landlords have experienced difficulty in getting councils to meet the requirement to pay HB direct where there is disagreement over the contractual date for the payment of rent. On receipt of a request for direct payment councils referred to paragraphs 6.86-89 of the Local Housing Allowance Guidance Manual which stated:

The DWP takes the view that a person cannot be in rent arrears in respect of a period that has not yet been served.

In *Doncaster v Coventry City Council*, First Tier Tribunal,<sup>66</sup> the landlord requested direct payment from the council on the grounds that it was 8 weeks overdue. The council claimed that the rent was not 8 weeks overdue. The tribunal judge, Mr CJ Jones, concluded:

...rent is in arrears once the contractual date for payment has passed irrespective of whether rent is due in advance or in arrears. Regulation 95 of the 2006 (Housing Benefit) Regulations refers to a liability to pay rent and the liability in this case is to pay rent in advance.<sup>67</sup>

This ruling was welcomed by landlords. In addition, the DWP responded by amending the guidance on the operation of the eight week rule:

13. There is no definition in regulations as to how the eight weeks' arrears should be calculated but we included a note in the original LHA guidance to the effect that the '*DWP takes the view that a person cannot be in arrears in respect of a period that has not yet been served.*'

14 In a recent appeal tribunal (*Doncaster v Coventry City Council*, First Tier Tribunal 032/09/00932, 5 October 2009) the Chairman expressed the view that '*Rent is in arrears once the contractual date for payment has passed irrespective of whether rent is due in advance or in arrear.*' A number of you have asked us to clarify the Department's position.

15 The intention behind HB regulation 95(1)(b) is to provide landlords with the security of direct payment as an alternative to seeking possession on a mandatory ground and so avoid a situation arising where a tenant is evicted under Housing legislation. In view of this, we have consulted with lawyers at Communities and Local Government to establish at what point they consider a tenant to be in arrears of eight weeks. As they are also of the view that rent is in arrears once the date for payment has passed

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<sup>65</sup> Work and Pensions Select Committee, Fifth Report of 2009-10, *Local Housing Allowance*, HC 235, March 2010, para 102

<sup>66</sup> 032/09/00932, 5 October 2009

<sup>67</sup> *ibid*

without any payment being made, we have revised the LHA guidance so that it is consistent with this position.<sup>68</sup>

Additional guidance on the 8 week rule can be found in chapter 4 of *Local Housing Allowance Guidance Manual* (April 2011).

Private landlords are responsible for carrying out full checks on prospective tenants and reassuring themselves of the reliability or otherwise of the people they let to. Where a claimant is entitled to HB and fails to meet their rent payments the landlord has the same options available as if the tenant were working and ineligible for HB, i.e. to pursue eviction action and sue for rent arrears. Local authorities have no responsibility towards private landlords who incur rent arrears when they let to HB claimants except where the arrears reach 8 weeks (see above).

The research published by the DWP in October 2010, *Private Landlords and the Local Housing Allowance System of Housing Benefit*, found little knowledge of the safeguards on offer amongst landlords aside from the eight week rule – in any event eight weeks was felt to be too long a period over which to allow arrears to accrue:

Awareness of the eight week rent arrears provision was widespread, partly because it had been widely discussed at meetings and forums, and partly because respondents had often used the instrument. The period of rent arrears under the provision was criticised for being too long, with four weeks regularly suggested as being sufficient for both the landlord and tenant. Respondents often pointed out that their own costs, especially mortgage repayments, still had to be covered even though the rent was not being paid. It was suggested that it was virtually impossible for them to ever recoup the eight weeks rent arrears from HB tenants, and that by the time a claim had been suspended and investigated, it could be over three months before any HB was finally redirected to themselves. There was only limited awareness of the ‘difficulty in paying their rent’ and the ‘unlikely to pay the rent’ safeguards. Respondents were often unclear on how the safeguards worked, or which eventualities they were expected to cover. Where they had been used, there was a lack of clarity why the HB was redirected to the landlord or agent in some cases but not in other similar ones. The amount of work, time and sometimes the cost of implementing the safeguards was often prohibitive, particularly for sideline landlords.<sup>69</sup>

## **6 Labour’s consultation on Housing Benefit reforms (2009)**

In December 2009 the DWP under the Labour Government published its consultation document, *Supporting people into work: the next stage of Housing Benefit reform*, which set out various proposals to reform Housing Benefit to complement the then Government’s “wider welfare programme by supporting people to move into work.”<sup>70</sup> The paper acknowledged that some problems had arisen as a result of the direct payment of Housing Benefit to tenants:

6.8 The direct payment of Housing Benefit to customers is an important component of our reforms to the system. Direct payments provide customers with the responsibility for handling benefit payments, and paying their rent, which they will need when moving into work. Many customers now operate bank accounts successfully—in many cases for the first time—as a result of this responsibility.

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<sup>68</sup> HB/CTB Circular A26/2009

<sup>69</sup> DWP, *Private Landlords and the Local Housing Allowance System of Housing Benefit*, October 2010

<sup>70</sup> Cm 7769

6.9 However, some stakeholders have raised concerns about the operation of direct payment of Local Housing Allowance to customers and we know that, in some cases, safeguard procedures are not being operated well enough. This is why we are working with local authorities to improve the guidance which helps them make decisions and to improve the quality and consistency of the decisions themselves.<sup>71</sup>

The paper floated the idea of returning an element of choice to claimants which would enable them to opt to have their benefit paid direct to the landlord. In return for receiving direct payments of benefit landlords might be required to meet certain minimum quality or energy efficiency standards:

6.11 The standards could include the Energy Performance Certificate Ratings, the Housing Health and Safety Rating Systems, operating in England and Wales, or the Repairing Standard—a standard for the repair of private rented accommodation in Scotland.

The specific questions posed in the consultation paper included:

- Should Housing Benefit entitlement be conditional on property meeting certain standards?
- Should a direct payment to the landlord be linked to the property meeting a certain quality or energy standard?<sup>72</sup>

The consultation period closed on 22 February 2010.

The Work and Pension Committee's inquiry into the LHA (March 2010) rejected the idea of linking choice over Benefit payments with energy efficiency standards:

60. We seriously question the Government's suggestion to re-introduce tenant choice as to whether the payment is made to them or to the landlord under the condition that energy efficiency standards are met. We believe that this proposal would undermine a number of important objectives for LHA. It would bring back administrative burdens and benefit complexity just removed by the scheme and, most importantly, would undermine the objective of removing barriers to work as set out above. We agree with the witnesses to this inquiry who argued that standards should be improved and energy efficiency targets met, but looking at the objectives behind LHA we think that trying to achieve this through LHA would do more harm than good.<sup>73</sup>

## 7 Universal Credit

When the phasing in of Universal Credit begins (expected in October 2013) the Local Housing Allowance will be replaced by the housing element of Universal Credit. Many of the existing features of the LHA, including direct payments, will be carried over into the new system. Lord Freud reportedly told a BPF Residential Conference in February 2011 that greater protection against rent arrears for landlords and tenants would be offered under Universal Credit.<sup>74</sup>

The BPF's submission to the Welfare Reform Public Bill Committee in May 2011 raised several issues and questions around direct payments under Universal Credit:

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<sup>71</sup> *Ibid* p32

<sup>72</sup> *ibid*

<sup>73</sup> Work and Pensions Select Committee, Fifth Report of 2009-10, *Local Housing Allowance*, HC 235, March 2010, para 60

<sup>74</sup> [BPF Submission to the Welfare Reform Public Bill Committee](#), May 2011

...Government has given a commitment that it will offer greater protection against rent arrears under Universal Credit for tenants and landlords in the Private Rented Sector (PRS) than is currently the case. We welcome this pledge and believe that giving tenants choice to have their LHA, and the equivalent under Universal Credit, paid direct to landlords without conditions would be the simplest and most cost effective solution for providing such protections. This ought to be supplemented by allowing landlords to mitigate their losses as soon as their tenants go into arrears by requesting direct payment as soon as rent is not paid. Paying LHA direct to landlords would not only reduce landlord administration costs and ensure that they have adequate funds to maintain and manage their property; it would also help to keep landlords in the LHA market as the risks of rent arrears is reduced.

*11. Given that Government has so far rejected unconditional tenant choice for direct payment, but has committed to improve protections against rent arrears, it must detail its alternative policies, both for before and after the introduction of Universal Credit, in order that the Bill Committee and the wider public can review and challenge where necessary.*

*12. In terms of Government plans for rent arrears protection and the role of direct payment under Universal Credit, a number of significant questions remain unanswered. For example:*

*a. Currently in the PRS 11% of claimants' have their benefit paid direct to their landlord because they are deemed as vulnerable. How will such a subjective judgment, currently made at a local level, be made with a centralised system?*

*b. About 8% of claimants in the PRS don't pay and their landlord receives direct payment. How will that operate under Universal Credit?*

*c. The vast majority of social rented sector tenants currently have their rent paid direct to their landlords via the housing benefit system. How will this work under Universal Credit and what are the resource implications for housing associations?*

*13. These are substantive areas of policy and MPs should press the Government for some detail on them before the Bill enters the House of Lords. If the Government cannot provide such detail during the Bill's passage we think it is right that Parliamentarians should ask that such provisions are introduced by affirmative order.<sup>75</sup>*

The [Universal Credit Regulations 2013](#) (SI 2013/376) and the Universal Credit (UC) aspects of the [Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance \(Claims and Payments\) Regulations 2013](#) (SI 2013/380) came into force on 29 April 2013.

Regulation 58 of the Claims and Payments Regulations provides for alternative payment arrangements under UC – this will enable direct payment of all or some of a claimant's UC to a third party (such as a landlord) in certain circumstances.

There is currently no equivalent to the “trigger” whereby direct payment to a landlord must be made where 8 weeks' rent arrears have accrued. The DWP is developing safeguards to mitigate potential risks to tenancies and landlords' income streams. Some of these may resemble current arrangements within Housing Benefit e.g. paying rent to landlords on behalf of claimants; others will introduce new protections and support e.g. personal budgeting

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<sup>75</sup> *ibid*

advice for claimants with difficulties managing their finances. The DWP has published [Personal Budgeting Support guidance](#) – this guidance states:

Alternative payment arrangements will be 'claimant centric,' in other words something that is done 'with the claimant' rather than 'to the claimant'. Applications will be considered on a case by case basis using existing business knowledge i.e. information we hold about the claimant.

A claimant can be considered for one or more alternative payment arrangements based on individual circumstances and characteristics. The Universal Credit adviser acting on behalf of the Secretary of State makes the decision taking account of the claimant's ability to:

- Pay their bills on time, particularly their rent.
- Budget income and outgoings over a calendar month.
- Manage a single payment to the household.

The guidance goes on to state that paying rent direct to the landlord “will be the first priority” where rent is part of the UC award and an alternative payment arrangement is deemed necessary.

There is an intention to provide for an “arrears trigger” within UC but a decision on the timing of the trigger has not yet been made. Six Direct Payment Demonstration Projects are underway (extended to the end of 2013) which are testing a range of triggers. The Universal Credit Pathfinder which began in April 2013 is using a two month trigger. These projects are focused on the impact of direct payments to tenants in the social rented sector but the findings will impact on the private rented sector as the approach adopted for direct payment of the housing element of UC will be tenure neutral. An announcement by the Secretary of State on his intentions regarding the Universal Credit arrears trigger is expected “shortly” and certainly ahead of the termination of the Demonstration Pilots.