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<b>REPORT TO:</b>	Cabinet Member (Finance and Resources)
<b>DATE:</b>	25 March 2015
<b>SERVICE AREA:</b>	Finance
<b>REPORTING OFFICER:</b>	Benefits Services Manager (Gary Layzell)
<b>SUBJECT:</b>	<b>Housing Benefit Payments</b>
<b>WARD/S AFFECTED:</b>	ALL DISTRICT
<b>FORWARD PLAN REF:</b>	N/A

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**1.0 PURPOSE OF REPORT**

The purpose of this report is to seek the endorsement of the updated Local Housing Allowance Policy on Making Payments and authorisation to remove the option of cheques as an instrument of payment for Housing Benefit

**2.0 RECOMMENDATION/S**

2.1 It is recommended that;

1. That the option to receive payment of Housing Benefit by cheque is withdrawn by 1 October 2015
2. The Local Housing Allowance Policy on Making Payments, as updated, and attached to this report be approved.

**3.0 RECOMMENDED REASON/S FOR DECISION/S**

- 3.1 To support more efficient ways of working, reducing costs to the Council and support targeted help for residents to access the correct financial products and manage their finances effectively,
- 3.2 To keep the policy up to date in accordance with regulations and appropriate practices reflecting changing conditions.

#### **4.0 ALTERNATIVE OPTION/S CONSIDERED AND RECOMMENDED FOR REJECTION *(Must be used for reports to Cabinet & Cabinet Member)***

4.1 To continue with cheque payments will hold costs within the service which need to be removed due to reduced funding and budgetary pressures.

4.2 Not to approve the updated policy. Policies should keep pace with changing requirements and the existing policy does not adequately deal with current requirements. Leaving the policy in its current state will constrain decision making and is detrimental to good decision making in a sensitive area.

#### **5.0 THE REPORT**

##### **5.1 Removal of cheques as an instrument of Housing Benefit payment**

Cheque payments represent 0.7% of awards counting for approximately 500 out of over 70,000 transactions annually. There are typically 100 out of 5,500 individuals receiving cheque payments, 10 of these are landlords.

The cost of administering cheque payments over and above the alternative of payment by BACS transfer is approximately £2.1k broken down by;

- Production, authorisation and postage - £0.7k
- Enquiries, replacing lost cheques and subsidy administration - £1.4k

All cheques issued are crossed and must be paid directly into the payees bank account to achieve their full value. The alternative is for it to be cashed on the high street with 10% of the value being lost reducing the customer's ability to meet their rent liability. Payment by bank transfer is more efficient and safer as there is no risk the payment will be lost in the post.

The service has been pro-active to reduce the number of cheques paid almost halving the number over the last three years. The people being paid by cheque now are those who have not engaged with activity to transfer them to BACS. By removing the option this will provide the necessary directive to remove all cheque payments from the system.

It is recommended there is a period of 6 months before cheque payments are completely removed to allow time to work with the tenants and landlords allowing a safe period of transition. It is likely some tenants will not have a relevant account capable of automated transfer and will require support to ensure they have the right financial product in place and ability to manage their finances effectively.

Cheque payments have been historically used as an instrument to enable cash payments. Following the move of customer services to Crescent Gardens this facility is no longer available and has been replaced with same day bank transfer of payment if there was an urgent need.

The removal of cheques does not present a risk to tenancies as BACS payments reach accounts more quickly. Within the tenant and landlord relationship one will have a bank account. The service already offers

support to help people access relevant accounts, which is enhanced with the introduction of Credit Union services and will continue to do so.

## 5.2 Changes to the policy

The administration of the policy is working well and does not require significant changes to be made. There is detailed legislation and guidance set by the Department of Work and Pensions in relation to payment of Local Housing Allowance which provides the basis for the policy.

The changes recommended to the policy are;

Paragraph Reference	Details
3.2	Amended to remove the reference for an option of cheque payments
3.3	Amended to expand the type of financial product options for payment including Credit Union accounts
3.4	Amended to remove cash payment option and provide the option to pay the landlord or a third party on a temporary basis until the tenant has a suitable account in place
3.5	Removal of the reference to payment of £15 rent top-up as this is now redundant following a legislation change
4.2	Amended to remove the reference to cheque payments

## 6.0 REQUIRED ASSESSMENTS AND IMPLICATIONS

6.1 The following were considered: Financial Implications; Human Resources Implications; Legal Implications; ICT Implications; Strategic Property/Asset Management Considerations; Risk Assessment; Equality and Diversity (the Public Sector Equality Duty and impact upon people with protected characteristics). If applicable, the outcomes of any consultations, assessments, considerations and implications considered necessary during preparation of this report are detailed below.

6.2 The Council's Business Improvement Team has looked at the operation of cheque payments within the authority and along with the finance team has identified this as an inefficient method of payment where financial and resource saving can be made.

6.3 The impact on individuals has been considered with conclusions that the changes will not be detrimental to any customers and will enhance the financial capacity of some households and be at worst neutral for others.

## 7.0 CONCLUSIONS

7.1 Cheques are becoming less common with financial institutions who are discouraging their use in favour of automated transfers. The volume of cheque payments for Housing Benefits has greatly reduced however some customers have not engaged and still wish to receive cheque payments. The only way the remaining few cases can be transferred is for the Council to decide that the option should be removed.

## **8.0 ACTIONS**

- 8.1 Update internal procedures to reflect the policy updates
- 8.2 Commence an intervention project to move the current claimants and landlords who are paid by cheque to BACS payments providing support as necessary to ensure a safe transition.
- 8.3 Publish the revised policy updating information and guidance on the Council's website

### **Background Papers – None**

**OFFICER CONTACT:** Please contact Alison Wilson if you require any further information on the contents of this report. The officer can be contacted at Benefits Services on 01423 500600.

# LOCAL HOUSING ALLOWANCE

## Policy on making payments

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## FOREWORD

- 1.0 Local Housing Allowance (LHA) is the method that rent support is provided to tenants in the private sector who qualify for benefit due to low income.
- 1.1 The system has been in effect since April 2008, providing a more transparent process of identifying the amount of available rent support.  
  
It allows tenants to make more informed choices about the affordability of accommodation and the impact on their benefits when moving in and out of work.
- 1.2 Tenants will become centre stage in relation to their entitlement and payment like other state entitlements are paid to them.  
  
Provision is made allowing discretion to make payment to the landlord, for those tenants who are either unable to cope with the financial responsibility with the arrangements or are likely not to pay their rent.
- 1.3 From April 2011 additional provision to the regulations has been made which allows direct payment to the landlord or their agent where it is to assist the tenant to obtain a new tenancy or retain their existing one.
- 1.4 In responding to this change, it is right that the Council now sets out its arrangements for paying the LHA in this policy document.
- 1.5 The policy is there for tenants, landlords and stakeholders and hopefully communicates a fair and transparent approach, balancing the needs of both tenants and landlords.
- 1.6 The policy will be subject to review annually or as the need arises.

Councillor Richard Cooper  
Cabinet Member Finance and Resources  
Dated:

## **INTRODUCTION**

- 2.0 LHA is the vehicle for determining the level of rent support for private tenants and the manner in which it is paid.
- 2.1 Regulations will amend the current provision through Housing Benefit and herald a new approach for new claimants and existing claimants making a new claim after a break in their claim or following a change of address effective on or after 07 April 2008.
- 2.2 Significantly, the Government has chosen through LHA to develop the principles used to modernise the way other state benefits are delivered, and by so doing improving customer knowledge and thereby choice, creating a simpler approach to claiming benefits and fostering independence to support back to work policies.
- 2.3 This policy addresses the options for payment of the LHA based on the discretionary and mandatory provisions, which will exist in the regulations.
- 2.4 The regulations remove the tenant's ability to consent to payment being made to their landlord as a matter of course and so by infer that there is a presumption that payment will be made to the tenant. This is a cornerstone of government policy, to break the link of benefit dependency and empower tenants to take decisions about their household expenditure and their contractual commitments to pay their rent.
- 2.5 This policy seeks to balance the needs of tenants and landlords addressing the aspirations of government policy, whilst safeguarding those that are vulnerable to this new approach or seek to take advantage or abuse the benefits system.
- 2.6 This policy has been developed in conjunction with various stakeholders and through the North Yorkshire and York consortium of councils working to improve benefits services across the region.

## **GENERAL ARRANGEMENTS FOR PAYMENT**

- 3.0 In accordance with the regulations, payments will be made in arrears to reduce the risk of overpayments that can happen due to changing customer circumstances.
- 3.1 Payments will generally be made four-weekly as this provides a consistent series of payment throughout the year and allows a simpler explanation when overpayments arise, as entitlement is calculated on a weekly basis. The regulations provide for payments to also be made on a fortnightly basis, which the Council will adopt to assist customers where higher multiples of payments cause financial difficulties. It will also keep under review, the possibility of monthly payments when it is satisfied that it is able to administer them efficiently.

- 3.2 The Council's method of payment will be by direct to a nominated bank account through the BACS system being the most efficient and safe system for payment.
- 3.3 The expectation is that customers will be encouraged and supported in opening a bank, building society, Post Office or Credit Union account to receive payment, which provides additional options for automated rent payments and safeguarding the threat of falling into arrears.
- 3.4 Payment of Local Housing Allowance may be made on a temporary basis to an alternate payee, either landlord or other nominated third party, whilst the claimant is supported to open an account as detailed in paragraph 3.3.
- 3.5 Where, on the death of a claimant, payment of LHA is due to be made, it will either be made to the personal representative, or next of kin, or this will be superseded where the decision had been made before death to make payment to the landlord, but only to the extent of any rent liability which remains outstanding.
- 3.6 The Council will use its powers to suspend payment of LHA where it believes there has been a change in circumstances, which will cause an overpayment to occur. It will also withhold payment when it has to answer a question over who payment should be made to and enquiries are required before the decision can be made.
- 3.7 The Council will optionally use its power to make interim payment to a landlord pending a decision required under paragraphs 4.3 to 4.5. This power can prevail for a period of 8 weeks and this will be the guiding target for resolving decisions of this nature.

## **DISCRETIONARY ARRANGEMENTS**

### **Appointees**

- 4.0 The current arrangements for payment of Housing Benefit allow for the payment to be made to another person at the claimant's express consent. This will arise where the claimant is unable to act, in such case appointee or receiver will be nominated.

### **Tenant absconding leaving rent arrears**

- 4.1 Where a landlord makes the Council aware of an outstanding rent liability upon a tenant vacating a property, it will make any outstanding payment of LHA over to the landlord on evidence being submitted of the outstanding liability.

### **First payment**

- 4.2 The regulation makes provision for the Council to use its discretion to make payment to the landlord where.

'it is in the opinion of the Authority that the claimant has not paid their rent in respect of which the payment is to be made and it is in the interests of the efficient administration of Housing Benefit for a first payment to be

made in the landlord's name'

The Council is conscious of the intention of this regulation and will consider each case on its merits. Its officers will have particular regard to new tenancies within normal claim gathering where rent arrears are identified.

The Council would, on application by the tenant, pay the Local Housing Allowance to the tenant upon receiving evidence that the rent liability has been paid.

#### 4.3 **To assist securing or retaining a tenancy**

This is a new addition to the regulation coming into effect from 1 April 2011 and introduces an option for direct payment where a tenancy 'is at risk if the payment is not made direct to the landlord or their agent'.

This is the first of four safeguards following the principle that the tenant does not have the power to request or consent to payment being made to their landlord as a matter of course. This option, along with the following three options, would be considered where the other options in this policy and those under mandatory powers have been considered and do not apply.

This safeguard is designed to support tenants accessing and retaining tenancies particularly at a time when the level of rent support is likely to reduce.

The Council will seek to establish that a new tenancy will not be granted unless there is an express condition that any payment of benefit is to be made directly to the landlord.

For existing tenants, whether they are current benefit claimants or not, the Council will seek to establish that the tenancy will not be renewed and / or there is a risk of eviction unless the benefit award is made directly to the landlord.

The Council will remain vigilant to any unscrupulous parties who wish to seek to abuse this provision for their own end.

The Council will, through its officers, facilitate awareness through its website, information accompanying forms and decision notices and through training of its customer service staff and through newsletters and appropriate forums.

The Council will seek to corroborate information it receives from its own records and those offered by stakeholders and advice agencies, friends or family, support organisations and government agencies.

The Council will ultimately make its decision on the balance of probabilities and where there is doubt seek to make the decision to make payment to the tenant, the person making and ultimately responsible for their claim.

### **Difficulty in relation to the management of his financial affairs**

- 4.4 This is the second of four safeguards following the principle that the tenant will no longer have the power to request or consent to payment being made to their landlord. This power, therefore, leaves it open for the Council to decide if the tenant is vulnerable to the decision to make payment to them.

The regulation says that when ‘the Council considers that the claimant is likely to have difficulty in relation to the management of his financial affairs’ then it may make payment to the landlord.

This clause is to protect those in our community who cannot, by virtue of their disposition, manage their own affairs and is likely to include people with learning difficulties, medical conditions, illiteracy, language difficulties, addictions such as drugs, alcohol or gambling, severe debt problems and temporary life issues (for example; hospitalisation, relationships, bereavement).

The Council will, in the first instance create an awareness of this clause, so that the claimant and any person or organisation who is able to vouch for them, are able to submit a statement setting out why the claimant is likely to have a difficulty and how this might be verified.

The Council will remain vigilant to any unscrupulous parties who wish to seek to abuse this provision for their own end.

The Council will through its officers, facilitate awareness through its website, customer service staff, newsletters and appropriate forums.

It will institute channels with advice agencies and trusted stakeholders and provide specific forms to allow the relevant information to be provided.

In working with the most vulnerable in our community, its officers will be sensitive to those needs and work carefully to illicit the relevant information. Where stakeholders cannot vouch for the claimant, there will, in some cases be the opportunity to make referrals, where a person is deemed vulnerable and so they can receive professional support.

The Council will also use its home visiting service to help claimants complete the appropriate paperwork and to understand the claimants arrangements for managing their tenancy and coping with household matters.

### **It is improbable that the claimant will pay his rent**

- 4.5 This is the third of four safeguards following the principle that the tenant will no longer have the power to request or consent to payment being made to their landlord.

This power therefore leaves it open for the Council to decide if the tenant is likely to use the LHA for other than payment of their rent and cause public funds to be used for a purpose they were not intended. This action

brings the scheme into disrepute and invokes a loss of confidence from private landlords.

The regulation says that where 'the Council considers that it is improbable that the claimant will pay his rent' then it may make payment to the landlord.

This clause is to protect against the unscrupulous in our community who will seek to take advantage of public funds, with no intention of using the payment to support any outstanding rent liability.

In coming to a view on any particular claimant, the Council will base its decision on past history on defaulting on debts and particularly statements from landlords where the tenant has had a previous history of non- payment of rent.

The Council will through its officers, facilitate awareness through its website, customer service staff, newsletters and appropriate forums.

The Council will seek to corroborate information it receives from its own records and those offered by stakeholders and advice agencies, friends or family, support organisations and government agencies. It will take statements from the claimant on an approved form.

The Council will ultimately make its decision on the balance of probabilities and where there is doubt seek to make the decision to make payment to the tenant, the person making and ultimately responsible for their claim.

Ultimately the Council will also seek, where appropriate, to help the claimant, by making an appropriate referral to help the tenant resolve the issues relating to non-payment.

**A direct payment has previously been made by the Council to the landlord under the LHA provisions**

- 4.6 This is the final safeguard that follows the principle that the tenant will no longer have the power to request or consent to payment being made to their landlord.

This power therefore recognises that a previous decision to make payment direct to the landlord is likely to be founded on good cause and that unless there is evidence to the contrary, the decision should be carried forward to the new claim.

The Council will use this power to reinforce its decision-making process, unless there is a strong case to the contrary which gives rise to the original decision no longer being warranted.

Where there is a case to the contrary, the Council will seek to corroborate information it receives from its own records and those offered by stakeholders and advice agencies, friends or family, support organisations and government agencies. It will take statements from the claimant on an approved form.

The Council will ultimately make its decision on the balance of probabilities and where there is doubt seek to make the decision to make payment to the tenant, the person making and ultimately responsible for their claim.

## **MANDATORY ARRANGEMENTS**

- 5.0 The regulations provide for powers that require the Council to make payment to a landlord.

### **An amount of Income Support or Jobseeker's Allowance is paid to the landlord**

- 5.1 The Council will respect the decision of the Jobcentreplus who adjudicate on decisions relating to Income Support and Jobseekers Allowance and make payment of LHA to the landlord.

On a challenge from the claimant, the Council will make representation to the Jobcentreplus on the claimant's behalf, but ultimately accede to their decision.

### **The claimant is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent**

- 5.2 The Council is conscious of the principles of LHA and the intervention must be prompt when arrears have accrued. Verification of the arrears must be quickly established from the landlord, in writing on an approved form.

The Council will act on the guidance offered by the Department for Work and Pensions, which stipulates that arrears should be measured by the terms contained within the tenancy agreement and reflect the period for which rent is due. This provision holds in circumstances where future rent liability exists.

The Council will invoke this regulation without hesitation, as a commitment to reducing tenant debt and landlord exposure to unacceptable levels of rent arrears.

This provision, together with the first payment option, should provide a measure of confidence to both landlords and tenants that the Council will be active to promote LHA, but keep in check any abuse of the system.

The regulation is conditional on the landlord being a fit and proper person to receive payment and that to make payment is in the interests of the scheme.

The Council will, therefore, not consider landlords fit and proper where there is evidence of fraud, failure to report changes they would have knowledge that could affect their tenants entitlement to LHA or they refuse to repay overpayments for which the regulations hold them liable.

The Council will also view any disputes arising, which within reason gave good cause to the tenant to withhold their rent. The Council will consider

the reasonableness of action on both sides in trying to resolve the dispute and this will influence the decision about payment.

The Council will through its officers, facilitate awareness through its website, customer service staff, newsletters and appropriate forums.

## **DECISIONS**

- 6.0 Decisions will be made in accordance with the prevailing requirements of the regulations and as far as practicable within 14 days of receiving the requested information / evidence.
- 6.1 Decisions will be recorded in such a form to answer any further representation and subsequent appeals.

## **NOTIFICATION**

- 7.0 The Council will notify the relevant interested parties to each decision. In all cases this will be the claimant or their representative.
- 7.1 Landlords will be notified where the decision relates to arrears of rent under the provisions of paragraphs 4.1, 4.2, 5.1, or 5.2.
- 7.2 Notifications will be made in writing within 7 days of the decision setting out the date from when payment will be made and the rights to make representation.

## **REVIEWS**

- 8.0 Reviews will periodically take place of decisions taken under sections four and five, to ensure that the circumstances giving rise to the decision have not changed.
- 8.1 The period for review will be reflective of the individual circumstances and a timescale will be set according to those circumstances. This should not be longer than 3 years in any one case in line with the benefit compliance programme.
- 8.2 The review of who to make payments to will be undertaken either by checking internal records, contacting representatives or stakeholders / landlords and where necessary through a formal review with the claimant or a combination of any of these depending on the individual circumstances.
- 8.3 In exceptional circumstances such as cases of severe mental impairment where there is no prospect of a change occurring, there would not be a routine review of the payment decision.

## **APPEAL**

- 9.0 The regulations set out the requirements for handling disputes and receiving representation.

- 9.1 In the first instance, representation can be made to the Council to reconsider its decision and this must be in writing and within one month of the decision being notified. A senior officer who was not involved in making the original decision will undertake the reconsideration.
- 9.2 Regardless of 9.1, the decision can be appealed following the same process in writing and within one month. The Council can look over the appeal, but if it chooses not to change its decision, then the papers will be submitted to an external Independent Appeals Tribunal.

### REGULATORY FRAMEWORK

The Housing Benefit Regulations 2006 currently make the following provisions for payment of Housing Benefit. Some of these provisions are either removed or updated by the Local Housing Allowance Regulations 2007.

#### **MAKING PAYMENT TO ANOTHER PARTY THAN THE CLAIMANT**

The authority *may* pay other than the person entitled where;

- ❑ the claimant is unable to act for themselves and another person as been appointed to act in their affairs (e.g. a receiver appointed by the Court of Protection or an attorney), or
- ❑ they are able to act for themselves but wish to appoint another person to receive payments on their behalf

(HB Regulation 94)

#### **Making payment to the landlord**

The authority *may* make payment to the landlord where;

- ❑ the tenant has requested it, ( DELETED by LHA amending regulation) or
- ❑ it is in the interests of the claimant, ( DELETED by LHA amending regulation) or
- ❑ the tenant has left owing rent, or
- ❑ it is in the opinion of the authority that the claimant has not paid their rent in respect of which the payment is to be made and it is in the interests of the efficient administration of housing benefit for a first payment to be made in the landlord's name
- ❑ the authority considers that the claimant is likely to have difficulty in relation to the management of his financial affairs, or
- ❑ the authority considers that it is improbable that the claimant will pay his rent, or
- ❑ a direct payment has previously been made by the authority to the landlord under the LHA provisions or.
- ❑ the relevant authority considers that it will assist the claimant in securing or retaining a tenancy.

(HB Regulation 96)

Where the authority suspects the above grounds to be a relevant and is considering whether to make payments on one of these grounds it may make a payment to the landlord for a period not exceeding 8 weeks. (Inserted by LHA amending regulations)

The authority may make payments where there is an excess over rent liability but only so far as that covers arrears and rent liability but no more. (Inserted by LHA amending regulations)

### **Payment on death of the person entitled**

Payment shall be made to either the personal representative or his next of kin (if over 16 years) unless other provision has been invoked for payment to be made to the landlord prior to death  
(HB Regulation 97).

### **Payment to a landlord**

A payment shall be made where:

- ❑ an amount of Income Support or Jobseeker's Allowance is paid to the landlord, or;
- ❑ the claimant is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent except where it is in the overriding interests of the claimant not to make direct payments to the landlord or where the authority is satisfied the landlord is not a 'fit and proper' person to receive payment.

(HB Regulation 95)