

APPENDIX C

LOCAL HOUSING ALLOWANCE: SAFEGUARDS POLICY (INCLUDING LOCAL GUIDANCE)

Introduction

This document sets out the guidelines by which officers will make decisions on the payment of Housing Benefit (HB) as Local Housing Allowance (LHA). The policy should be read in conjunction with the local guidance document, which provides greater detail on how the policy will be applied, that is set out in the appendix to the policy.

Tenants who have their HB paid as LHA cannot simply request that their payments are made direct to their landlord. This was one of the principles underlying the introduction of LHA; that the tenant should take responsibility for paying their rent in the same way as a non-benefit customer. There are certain exceptions where the local authority must make a payment direct to the landlord; these are:

- Payments have been made to the landlord from other income related benefit to clear rent arrears
- The customer is in arrears of up to eight weeks with the rent. (Note: the landlord must request direct payment for this rule to operate)

Local authorities have a discretion to make payment to the landlord rather than the tenant where:

- The local authority considers that the claimant is having difficulty managing his / her financial affairs (for example, due to drug or alcohol dependency or a serious medical condition)
- The local authority considers it improbable that the claimant will pay his / her rent (for example, the tenant is likely to run up serious rent arrears)
- The claimant has previously had payments made to the landlord because of the operation of the eight week rule but the arrears have been cleared
- The authority considers that it will assist the claimant in securing or retaining a tenancy. For these purposes, for a tenancy to be secured or retained, the rent must be affordable for the tenant so the landlord may have to agree to reduce their rents; in most cases, this would be to the LHA rate

The first two discretions above recognise that there is a group of 'vulnerable' individuals (although the term 'vulnerability' is not used in the regulations) that rely on direct payment, even to private landlords, because they are not capable of maintaining their own financial affairs. To protect vulnerable tenants, the authority will apply discretion to pay the landlord under "safeguarding". This ensures that a tenant who cannot cope with the responsibility of managing a budget is not placed at risk of homelessness.

Aims and objectives

The aims and objectives of the policy are set out below:

- To provide a safeguard for the most vulnerable tenants and reassure them that their benefit and rent will be paid
- To help prevent rent arrears and tenants being put at risk of eviction
- To help sustain tenancies for vulnerable tenants
- To reassure landlords that their rent will be paid if they have vulnerable tenants or are approached by vulnerable tenants
- To help put tenants in touch with other agencies where necessary and give people the opportunity to and support so they can manage their own affairs
- To ensure council officers make reasonable, fair and consistent decisions
- To promote a transparent and simple process that is widely understood
- To treat each case individually and to avoid making assumptions about people's situations

The policy is not designed to:

- Supersede support that is being received by tenants and helping them to be responsible for their own income and expenditure
- Be a blanket policy for agencies providing support to private tenants
- Be used by landlords to circumvent the aims of LHA

Each case must be considered on its own merits and this policy has been drafted for guidance, in order to ensure that the authority acts in a transparent and consistent manner.

Procedure

Alerting the Authority of potential vulnerability

Normally, the initial approach for a direct payment should come from the customer or their representative, who will make the authority aware that they would prefer their LHA to be paid to the landlord. The authority, however, will be prepared to receive representations made by others concerning the customer, such as friends and family members, the landlord, housing advice officer's, homelessness prevention teams and welfare advice organisations, including money advisors. All representations must be in writing, supported by detailed reasons and evidence of why the claimant is considered likely to have difficulty in managing their affairs.

The request needs to be supported with written evidence from a third party, but initially, it can be by:

- Letter / email
- Phone call
- The authority's benefit application form

Gathering information and evidence

Officers will consider the information that has been received and whether there is enough evidence to make an appropriate decision. Evidence can be from:

- Social Services
- Department for Works and Pensions (DWP)
- Reputable financial institutions
- Courts
- Doctors
- Support or advisory services (for example, Citizens Advice Bureaux (CAB))
- Other council services (for example, the Strategic Housing / Housing Options Team)

(Note: Evidence from a landlord cannot be accepted on its own).

Making a decision

One of two decisions will be recommended and approved by a manager:

- The tenant is vulnerable and payment of LHA will be made to the landlord
- The tenant is not vulnerable and payment of LHA will be made to the tenant

Notifying affected parties

The authority will write to the tenant and / or their representative and advise them of the following:

- The decision and reasons for it
- If, and when, the decision will be reviewed
- Their appeal rights
- The advice agencies, voluntary or statutory organisations that may help them
- Contact details for CAB in the authority area

In most cases, the customer is likely to agree to direct payments to their landlord, if the alternative is losing their tenancy or not being able to secure a new tenancy. If the customer is against direct payments (for example, which may arise if the customer has not initiated the request), it is for the authority to make a decision that is in their best interests.

The authority will write to the landlord and tell them:

- If their tenant has been found vulnerable and the authority will pay them LHA up to the contractual rent
- If, and when, the decision will be reviewed
- That their bank details are needed, if not previously provided
- If their tenant has been found not to be vulnerable, the landlord's appeal rights against this decision

Examples of vulnerability

Reasons that the authority might pay the landlord instead of the tenant could be because the tenant:

- Has a medical condition (affecting their mental or physical health)
- Has a learning disability or a physical disability
- Does not speak English as their first language
- Is going through some changes that mean the tenant needs some extra support
- Is dealing with an addiction (for example, to alcohol or drugs)
- Has a severe debt problem (for example, county court judgments, bankruptcy, or a bad credit rating preventing them from having a bank account)
- Is in serious risk of homelessness and has had dealings with the Strategic Housing Service at the authority

Legislative protection of payment to landlords

The vulnerability policy does not replace the legislative stipulations for payment to a landlord. HB legislation requires the authority to pay directly to the landlord in certain situations:

- The tenant is eight weeks or more in arrears
- The tenant has deductions made from their income related benefit for former rent arrears

Evidence of rent arrears will always be required by the authority if the landlord asks the authority to change the payment direction. If there is a dispute (over tenancy conditions such as redecoration / maintenance for example) and the rent is being withheld by the tenant until the landlord discharges his legal duty, this will not entitle the landlord to ask for direct payment, unless the withholding of the rent is deemed unreasonable. In this situation, the authority may choose to withhold payment until the dispute is resolved or may continue to pay the tenant. The authority is not empowered to mediate in landlord / tenant disputes in its role as benefit payer.

APPENDIX

LOCAL HOUSING ALLOWANCE: LOCAL GUIDANCE

Introduction

This guidance document has been adapted from one that was originally issued by the Joint Leicestershire Benefits Welfare Group. The basic rule under LHA is that payment must be made direct to the tenant; not the landlord. There are certain exceptions to this. The local authority must make payment direct to the landlord where:

- Payments have been made to the landlord from other income related benefit to clear rent arrears
- The customer is in arrears of up to eight weeks with the rent. (Note: the landlord must request direct payment for this rule to operate)

Local authorities have a discretion to make payment to the landlord rather than the tenant where:

- The local authority considers that the claimant is having difficulty managing his / her financial affairs (for example, due to drug or alcohol dependency or a serious medical condition)
- The local authority considers it improbable that the claimant will pay his / her rent (for example, the tenant is likely to run up serious rent arrears)
- The claimant has previously had payments made to the landlord because of the operation of the eight week rule but the arrears have been cleared
- The authority considers that it will assist the claimant in securing or retaining a tenancy. For these purposes, for a tenancy to be secured or retained, the rent must be affordable for the tenant so the landlord may have to agree to reduce their rents; in most cases, this would be to the LHA rate

The first two discretions above recognise that there is a group of 'vulnerable' individuals (although the term 'vulnerability' is not used in the regulations) that rely on direct payment, even to private landlords, because they are not capable of maintaining their own financial affairs. To protect vulnerable tenants, the authority will apply discretion to pay the landlord under "safeguarding". This ensures that a tenant who cannot cope with the responsibility of managing a budget is not placed at risk of homelessness.

Each case must be considered on its own merits and this guidance has been drafted in order to ensure that the authority acts in a transparent and consistent manner.

Interpretation of terms used

For the purposes of this guidance, it is necessary to provide an interpretation of some of the terms used in the regulations.

The phrase 'is likely' means that there must be clear evidence that is beyond reasonable doubt the tenant will be unable to manage their affairs. It is not sufficient to conclude that there is a possibility that the tenant may have difficulty managing their affairs or a presumption that tenants in certain circumstances carry a risk that they may be unable to manage their affairs.

It is important to distinguish between tenants who choose to manage their finances in a less than organised way and those that genuinely have difficulty managing their affairs. The phrase 'is improbable' means that there must be a degree of probability that the tenant will not pay his rent. This will generally be shown where arrears have accrued following payments being made to the claimant. It is not sufficient to conclude that there is a possibility that the tenant may not pay their rent as many tenants, regardless of their benefit status, carry a risk that they may not pay their rent.

It is important to distinguish between tenants who are genuinely unlikely to pay their rent and those who may claim that they are not likely to pay their rent because they would prefer not to take responsibility for paying it.

Tenants who are likely to have difficulty managing their affairs are deemed to be 'vulnerable' tenants. Some tenants may wish to be classed as 'vulnerable' simply because they would prefer to have payments sent direct to their landlord. The 'vulnerability' provision cannot be used to circumvent the fact that there is no longer a provision for the tenant to request direct payments. In most cases, the authority would be looking for evidence from professionals such as doctors, social workers, probation officers etc.

The authority assumes that, unless evidence to suggest otherwise is received, all tenants receiving the LHA will pay their rent and payment will be made to the tenant unless any of the other criteria for making payment to the landlord are met.

'Claimant is likely to have difficulty managing affairs' - Indicators

General

The following are possible indicators that tenants may be 'vulnerable'. By indicators, both the causes and the effects of vulnerability are meant – consideration must be given to either, or on occasions both, in any given case. It should never be decided that a claimant is vulnerable simply because he or she seem to match one of the indicators below. These are intended purely as a guide and are not a definitive list.

Where a representation is received without sufficient evidence, then payments will continue to be made to the tenant until such time as the appropriate evidence is provided.

People with learning disabilities

These can range from mild to severe problems. People with severe learning disabilities are likely to have an appointee, or deputy, to deal with their financial affairs or be resident in supported accommodation. Therefore under normal circumstances, the authority would only need to consider those who have slight learning difficulties and written evidence from support workers, a doctor, social services or a hospital should be provided to satisfy the criteria.

Tenant has a medical condition

One that is likely to seriously impair a claimant's ability to manage on a day-to-day basis. Obvious examples are forms of mental illness such as schizophrenia, depression or age-related mental deterioration such as early stages of alzheimer's disease or senile dementia. There are also physical conditions, which may make it difficult for a person to manage their affairs. In these situations, consideration must be given to how the tenant conducts his or her other financial affairs (for example, does his or her care worker collect their benefits from a post office by use of the proxy arrangements and pay any bills at the same time on the claimant's behalf?). However, it should be noted that people with severe mobility problems may have overcome these and be able to deal with their own financial matters and could therefore deal with payment of their rent. Where vulnerability is satisfied and payments are made to a landlord on the grounds of a medical condition, depending on the actual condition the person's situation should be monitored at regular intervals for improvement. Again, written evidence from support workers, a doctor, social services or a hospital should be provided to satisfy the criteria.

Illiteracy

This could be difficulty in reading and writing or financial illiteracy. In order to determine whether a person may be illiterate in any of these ways, the authority would generally look at how the current claim (and any other recent claim) was made. The application may have been completed by another person on the tenant's behalf or may have been completed by the tenants with incomplete information. Enquiries may have taken a longer period than is normal to resolve and if this is due to the tenant's illiteracy, this may be taken into account. However, a person who is unable to complete his or her claim form may be entirely capable of dealing with their finances or may have adequate support in place to help him or her when needed. The customer or a third party may make representations; in any event, further enquiries should be conducted in a sensitive manner. Illiteracy may be demonstrated by an inability to deal with payments that are issued, failure to reply to correspondence and cheques not presented. Written evidence from a support organisation would be required.

An inability to clearly communicate

Language difficulties alone are unlikely to lead to a decision that a tenant is unable to manage their financial affairs. Due to the long standing multi-cultural diversity within the authority's area this problem would arise very occasionally. The decision maker must evaluate the ability of a claimant to open a bank account because of any inabilities to communicate and the support the claimant could receive in doing so through support available from family or professionally.

Addiction to drugs, alcohol or gambling

There must be evidence from his or her doctor, a hospital, care workers, social services, probation services or other support organisations for these addictions.

Severe debt problems / recent county court judgements

Look for evidence from help groups, creditors, courts, solicitors etc. In all instances, where a tenant is likely to have difficulty managing their affairs because they have severe debt problems, and the tenant has not sought representation already to assist them, the tenant needs to be referred to the identified welfare rights support for the relevant authority for an assessment before a decision is made. Care must also be taken if the claimant is overdrawn at the bank and direct payment may be needed so that he or she can actually pay their rent. A customer may need advice to issue in writing to their bank a 'first right of appropriation' that insists that the landlord's direct debit is paid before the overdraft. If the customer is on a passported benefit such as income support where the authority would not normally ask for bank statements, it would require sight of the statements and other relevant documents if the customer was claiming to be vulnerable.

Bankruptcy

The court order is sufficient evidence of the bankruptcy. Bankruptcy falls into two categories – discharged and un-discharged. As the title suggests, a discharged bankrupt is a person whose period of bankruptcy has come to an end and should, in theory, be able to open at least a basic bank account. An un-discharged bankruptcy is a person whose period of bankruptcy is still in force. Proof of a customer being an un-discharged bankrupt should be sought. This would come in the form of the original bankruptcy notice given to the claimant at the time of being made bankrupt or by searching the Official Receivers website.

Asylum seekers who are eligible

Once refugee status is awarded, asylum seekers may claim benefits. If he or she is claiming LHA and is still receiving support from a support organisation, this may indicate vulnerability. Information from the organisation that supported him or her before he or she attained refugee status may be needed.

Previously detained by law

Consideration would be needed if the claimant requests direct payment. Private landlords may not house persons in this category due to the risk and direct payment would be an incentive to assist. The Probation Service would be able to provide written confirmation of detainment in cases of imprisonment, written medical evidence may be required if the person was detained under the Mental Capacity Act 2005.

Care leaver or fleeing domestic violence

Consideration would be needed if the claimant requests direct payment. Private landlords may not house persons in this category due to the risk and direct payment would be an incentive to assist. Paperwork from support organisations would be required.

Recently homeless

If the claimant was housed from being homeless, vulnerability status could be considered if he or she is still receiving support from a local authority or charity / support organisation. Written evidence from the organisation would need to be seen.

An inability to obtain a bank account

Letters from banks and / or evidence from money advisers would be required.

Unable to open a bank account

The biggest reason given by claimants why they are unable to open a bank account is that they have a bad credit history, or they won't pass a credit check. Whilst this is a valid reason for not being able to open a current account with facilities such as a debit / credit card, chequebook or with a credit limit, it does not stop the claimant from being able to open a basic bank account. In the majority of cases, banks will not perform a credit check to open such an account.

The only requirement for HB to be paid to the tenant is the existence of a basic bank account. The Financial Conduct Authority (FCA) offers practical advice on basic accounts accessible by the majority of people. They update a list of such accounts and the banks who offer them on their website. Staff will assist customers in identifying banks and basic accounts they offer and use the FCA website as reference. A supply of the FCA leaflet is to be maintained at both the main and satellite offices for customer use.

Whilst the facilities available on these sorts of accounts vary from bank to bank, most will offer a cash card, and the ability to set a direct debit or standing orders. They will not offer the customer an overdraft limit or a chequebook.

Whilst most banks will not perform a credit check to open these types of account, some do. If claimants are unsure as to whether they will pass a credit check, the customer should consider if the above banks should be avoided.

It is important that the customer clearly identifies that a basic account is required (to quote the particular bank's name for their basic account would help) or they will be credit checked, and probably fail an application, for a current account. This would then result in further contact with the local authority.

Possible indicators that a tenant is unlikely to pay their rent

Where a representation is received, but with no actual evidence that a person is unlikely to pay their rent, payment must be made to the tenant. The actions taken by the tenant once this payment has been received may be treated as further evidence to determine whether a tenant is likely to pay his/her rent.

The credit history could be a useful indicator, arrears of utility charges, letters from the tenant's bank, evidence of unpaid standing orders or direct debits could all indicate that the tenant does not manage his or her money sufficiently well and is unlikely to do so in the future.

The Council Tax (CT) records and HB overpayments records may indicate claimants whose records show persistent arrears or a failure to keep to repayment arrangements, which mean that a claimant will fail to pay his or her rent.

The existence of county court judgements would not automatically render a person "unlikely to pay"; however, these would be taken into account along with other evidence. Consideration should be given to the reason the judgement was gained – not paying priority or non-priority debts indicates a different profile of debtor. If someone received a judgement because of non-priority debt, this is an indicator of greater irresponsibility and therefore may make a conscious decision to only deal with priority debts.

Examples of priority and non-priority debts are given below:-

Priority	Non-priority
Rent	Loans (Unsecured)
Mortgage	Store Cards
Council tax	Catalogues
Water rates	Club memberships
Gas	Internet provider
Electricity	Mobile phone network

A history of rent arrears is more relevant as this indicates that the tenant may not place great importance on paying his or her rent. Consideration must be given to whether a 'person is unlikely to pay their rent' but not whether a person has a history of failing to make other payments or has experienced debt problems.

Where a tenant has always paid his or her rent but has other financial problems, payment will be made to that tenant, as there is no evidence to suggest that he or she will not pay their rent. However, where a person has not previously had a rental liability and so cannot have failed to pay their rent then other arrears or debts may be taken into account.

A tenant who would pay his or her rent but may prefer to have the LHA paid to their landlord direct may present himself or herself as having no intention to pay their rent to their landlord. In these situations, great care must be taken in considering the claimants statements but it may prove difficult to justify not acting on the tenant's information as the consequences could damage the landlord financially. This situation may justify more frequent contact on the basis that their questionable financial management skills will render them less likely to administer their HB claim properly and report changes in circumstances promptly.

Capacity to act / dealing with representations

The HB / CTS regulations enable certain individuals (for example, appointees) to make a benefit claim on behalf of a person who wants or needs to claim, when that person is unable to act for his or her self, whether temporarily or permanently.

The Mental Capacity Act 2005 changes the way that people who cannot act for his or her self can have other people appointed by the Court of Protection to act for him or her. Under the new system, the court can appoint a 'deputy' to act in relation to particular matters with which the person themselves has difficulty rather than the previous system where once a 'receiver' was appointed, the receiver had general powers to act for the person.

From 1 October 2007, when a person has been appointed to act on behalf of another by the Court of Protection for the purposes of claiming and receiving benefits, he or she has been known as a 'deputy' rather than a 'receiver'.

To check that a deputy has been given responsibilities that include dealing with the claimant's HB or CTS affairs, evidence of the terms of the court order that appointed the deputy must be sought.

The status of a deputy must be reviewed periodically since, unlike the previous receiver system, deputies will not have the power to make a decision if he or she knows, or has reasonable grounds to know, the person now has capacity to make the decision for his or her self in relation to HB or CTS.

Receivers appointed before 1 October 2007 continue to have their general powers to act. They should be accepted as able to act for the customer if they can demonstrate that they were appointed to the role before 1 October 2007 by the court and are still empowered to act.

Likewise, a deputy who makes an application in their capacity as an appointee for HB / CTS purposes is legitimately able to do so from 1 October 2007, if they can satisfy the authority's normal security (previously verification) procedures.

If the DWP has already accepted the deputy as appointee in respect of claims to DWP - administered benefits, local authorities may accept their legitimacy to act in respect of an HB / CTS claim or award.

When the Mental Capacity Act 2005 was introduced, five principles were designed to assist (primarily the Health Service) professionals to assess the capacity of persons at the time of making decisions and to develop who could represent the person if they did not have the capacity.

The five statutory principles are:

- A person must be assumed to have capacity unless it is established that they lack capacity
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision
- An act done or decision made, under this act for or on behalf of a person who lacks capacity must be done, or made, in his best interests
- Before the act is done, or the decision made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action

It is difficult to place these principles into a benefits service but regard must be had for them. A proportion of claimants to the extent that representation is regular rather than occasional means that a fair amount of claims are dealt with by a third party on behalf of a claimant. The officer processing the LHA claim will need to assess if a third party claim could have been made by the claimant directly and if the third party has the legal capacity to do so.

Under the Mental Capacity Act 2005, a new 'Lasting Power of Attorney' has been introduced to cover welfare, property and affairs. The donee of the lasting power of attorney can make decisions on the donor's behalf and therefore deal with a local authority with regard to a claim if the donor no longer has the capacity to do so. The difference between donee and deputy is that the donee is selected by the donor (the person whilst he had capacity to nominate a donee) and Lasting Power of Attorney is sought from the court to authorise the donee. A deputy is someone appointed by the court who may not have been someone chosen by the donor when he or she had capacity. In benefits terms, it means that decision makers will have to recognise that someone may attempt to make representations as a donee or a deputy. However there are restrictions on deputies over donees as they cannot be given power to 'trump' an attorney, specifically because the attorney was selected by the donor.

The Court of Protection authorises Lasting Power of Attorney and appoints deputies. The legislation requires that a public guardian be appointed and this office will be responsible for establishing and maintaining registers of lasting power of attorneys and of orders appointing deputies or supervising deputies. Section 58 of the act allows the public guardian to work with local authorities over clarification of the orders made by the Court of Protection. The public guardian also has rights over information from local authorities if investigating matters such as complaints against donees or deputies. The public guardian has the power to cancel Lasting Power of Attorney in certain circumstances.

The deputy or donee may make written representations that the claimant is 'vulnerable' and the local authority can accept their information as if they were the claimant if satisfied that the claimant does not have the capacity to do so and the donee / deputy has the authority to do so. The vulnerability criteria as defined above can then be used accordingly.

Other representations

Friends and family of the claimant

All representations must be in writing supported by detailed reasons and, where available, evidence of why the claimant is considered likely to have difficulty managing their affairs or unlikely to pay their rent. Information provided by relatives and friends may provide useful information that may support other evidence, but will not be accepted without other evidence as the person making representations will be primarily acting in the interests of gaining payment to the landlord for the claimant. Consideration must be given to the evidence supplied and whether the claimant should be referred to a money advice service for money and / or debt advice. It will not be possible to discuss the claimant's claim with family and friends unless the claimant has given consent.

The landlord

All representations must be in writing supported by detailed reasons and evidence of why the claimant is considered likely to have difficulty managing their affairs. It will not be possible to conclude from the landlord's representations alone that the tenant should be treated as vulnerable. However, it may be apparent from the nature of the representations that the tenant will not be considered as vulnerable. In these instances, a decision that the tenant is not vulnerable would be made, and a notification sent to the tenant and landlord detailing the decision.

Welfare groups and money advisors

All representations must be in writing although they are likely to arise because the tenant has contacted the welfare group or money advisor for assistance. The representations should be supported by statements that confirm that evidence to show that the tenant is likely to have difficulty managing their affairs is available for audit purposes. Persons, who have sought money advice, whilst acknowledging that they need support, may be unable to deal with their new responsibilities. Advisors dealing with client's debt problems will have knowledge of the tenant's financial management skill and their evidence will be useful in making a decision.

Social Services, doctors, probation officers, the Homeless Section

Representations must be in writing and must detail the reasons why the tenant is deemed to be likely to have difficulty managing their affairs. Where appropriate, evidence should be provided; in general, evidence from Social Services, doctors, probation services and the homeless section of the local authority will be accepted without question.

Jobcentre Plus, Pension Service or the Bond Guarantee Scheme staff

Representations must be in writing and detail the reasons why the tenant is deemed to be likely to have difficulty managing their affairs. Where appropriate, evidence should be provided. Consideration will be made for the claimant to be referred to a money advice service for money and / or debt advice.

Evidence does not have to be specifically addressed to the local authority and could be something that pre-dates the investigation; however, older evidence may be less relevant or reliable. Degrees of weight should be attached to each source of information. Evidence from the claimant, his or her friends and family is important, but it should be remembered that some claimants might want to do everything possible to secure direct payment to their landlord and thus avoid the responsibility that the benefits reforms promote. Where the landlord makes a representation, verification and evidence must be supplied.

Making a decision

A decision over vulnerability must be made once sufficient information and evidence is gathered. Where evidence must be gathered for vulnerability to be established then the local authority will have regard to Regulation 96 Housing Benefit (General) Regulations 1987 (S.I.1987/1971) that allows for payment to the landlord for the first eight weeks of a claim pending a decision. This will ensure that processing the claim will not be delayed and that the claimant will be protected from falling into arrears if there is a good possibility he or she is vulnerable.

If the local authority is unable to establish the facts to its satisfaction because the claimant has failed to co-operate, it must decide whether or not that failure to co-operate does in itself demonstrate vulnerability.

In some cases, it will be obvious whether the person is vulnerable or not; in others, a decision must be reached by carefully balancing all the available facts.

A claimant deemed to be vulnerable (or borderline cases) should be encouraged to seek support and advice, either elsewhere at the local authority or from voluntary groups, to enable him or her to be in a better position to manage his or her affairs. This could be anything from money advice to tackling more fundamental underlying issues.

Where a representation is made that a tenant is unlikely to pay his rent on the basis of existing rent arrears, the following considerations are required:

- If the tenant is eight weeks or more in arrears Regulation 96(2) (b) applies and payment must be made to the landlord under the statutory provisions
- Where the arrears arose wholly during a period for which HB has not yet been paid, then the first payment only should be made to the landlord and future payments to tenant
- Where arrears have arisen over a period when HB did not meet the full rental liability (and the tenant was not able to make up the shortfall) the tenant cannot automatically be assumed to be unlikely to pay his or her rent
- A tenant who has failed to use HB payments to pay his or her rent in the past can be assumed to be unlikely to pay his or her rent unless good reasons for non-payment of rent are provided
- Consideration should be made of any arrangements that the tenant has made to pay his rent
- Where there is insufficient evidence to suggest that it is likely that a tenant will fail to pay his or her rent, the payment will be made direct to the tenant. What the tenant chooses to do with this payment will be considered as evidence in determining the likelihood that future payments will be used to pay the rent

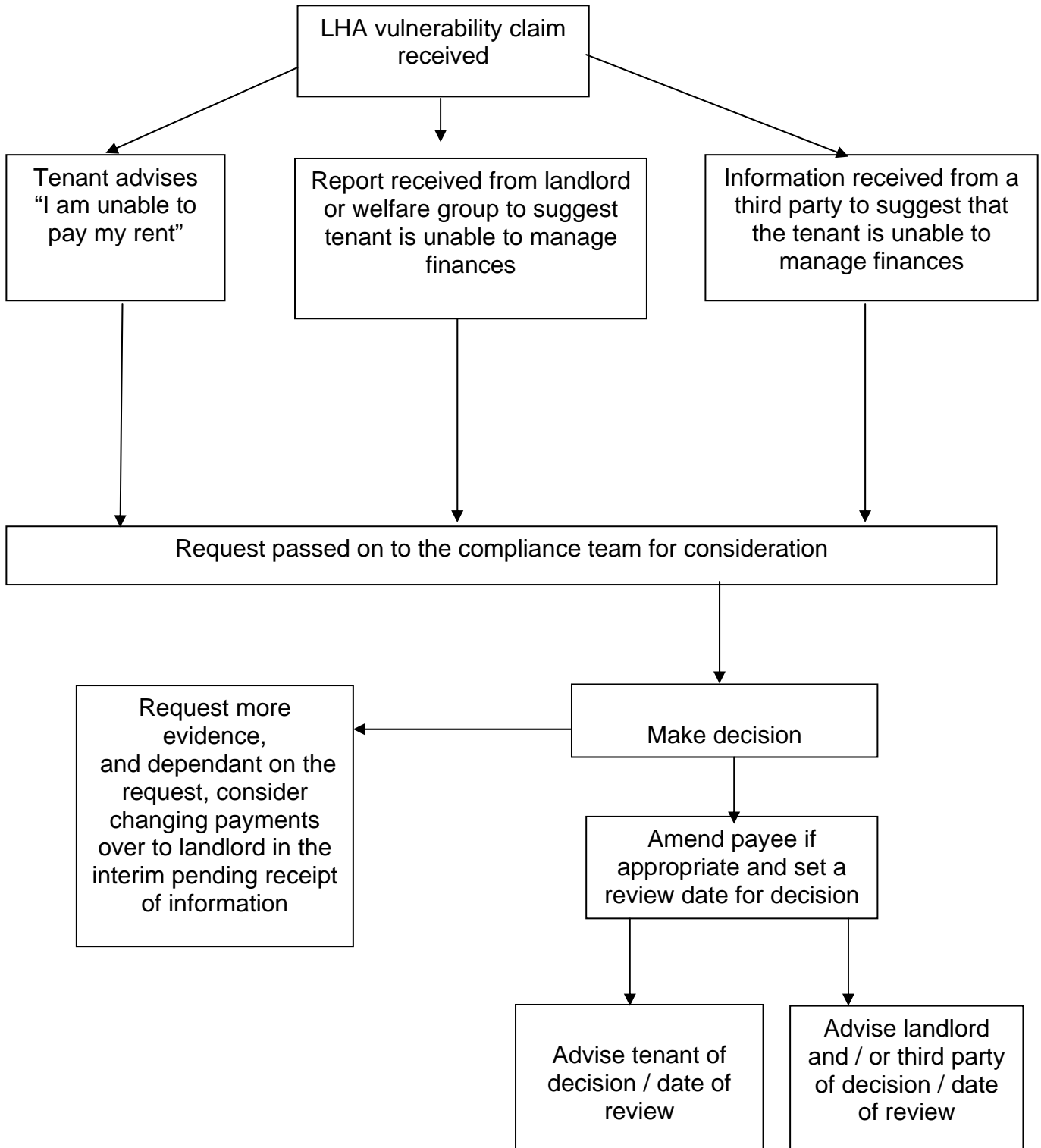
Notification of decision

All persons affected by the decision should be notified in writing of the decision and where applicable, reasons for the decision must be given. Appeal rights should be clearly stated.

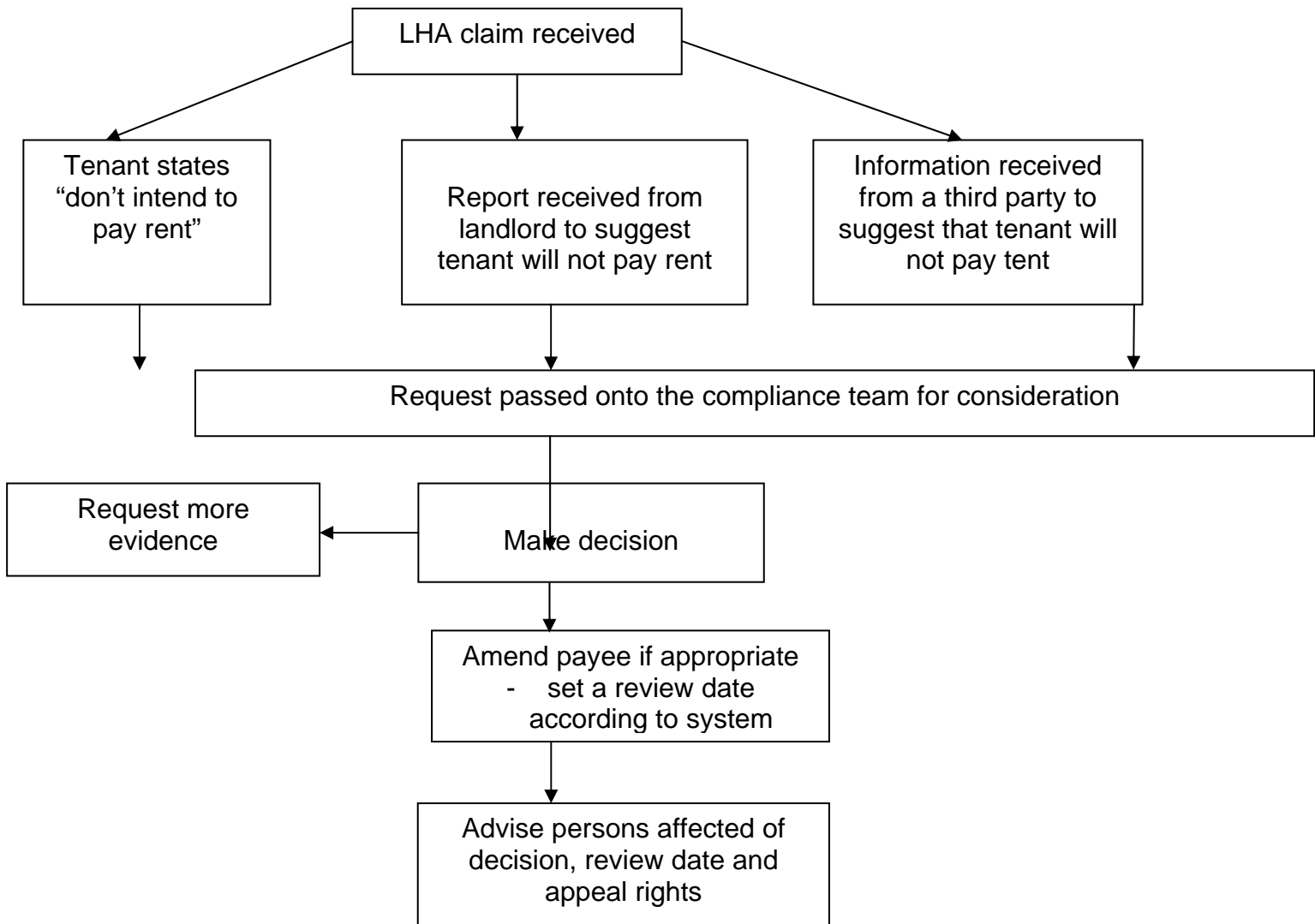
Evidence of vulnerability and possible sources

Reason for vulnerability	Suitable sources of evidence
Learning disabilities	<ul style="list-style-type: none"> • Letter from support provider • Letter from doctor • Letter from social worker
Medical conditions	<ul style="list-style-type: none"> • Letter from doctor • Letter from hospital
Illiteracy	<ul style="list-style-type: none"> • Letter from social worker
Inability to speak English	<ul style="list-style-type: none"> • Letter from support group • Letter from community group
Addictions to drugs, gambling or alcohol	<ul style="list-style-type: none"> • Letter from doctor • Letter from support worker • Letter from hospital • Letter from care worker • Letter from social services
Severe debt problems	<ul style="list-style-type: none"> • Court order • Letter from solicitors • Letter from help groups • Letter from creditors
Un-discharged bankruptcy	<ul style="list-style-type: none"> • Court order • Search of Official Receivers website
Inability to open a bank account	<ul style="list-style-type: none"> • Letter from bank • Letter from money advisor
Arrears / missed / erratic payments	<ul style="list-style-type: none"> • Letter from landlord

Process of dealing with vulnerability requests



Process of dealing with claimants who do not want direct payment



First payment to landlord

Regulation 96(2)(b) states that *'a first payment of rent allowance following the making of a decision on a claim may be made in whole or in part by sending to the claimant an instrument of payment payable to that landlord'*.

This regulation allows local authorities to send the first payment of HB to the tenant but with the cheque made payable to the landlord. The regulation is intended for use when the local authority is not satisfied that there are other grounds for making payments directly to a landlord but where it is in the interests of efficient administration to make the first cheque payable to the landlord.

Note that only the first payment can be made directly to a landlord under this provision. Subsequent payments must be made payable to the tenant unless there are grounds for paying the landlord arising from the 'vulnerability' or 'unlikely to pay' provisions.

Locally, this provision is to be used where the first payment is going to be for more than five weeks HB entitlement – regardless of the amount. In cases outlined below, the first payment of LHA would be payable to the landlord. In doing this:

- It provides some confirmation that a genuine tenancy has been created between the landlord and tenant
- It reduces the potential for abuse where the initial LHA payment is a larger than a normal payment (particularly where the claim has been backdated or there have been delays in deciding the claim)
- It informs the landlord that the HB claim has been determined; the landlord can then make arrangements with the tenant regarding future payments of rent

It should be noted the local authority would not make the first payment payable to the landlord where there is evidence to show that the tenant has paid the rent for the period covered by the first payment.

Eight-week arrears cases

Regulation 96(2) (b) provides that payment is to be made to the landlord, where a person is in arrears of eight weeks or more. The amount of his or her rental liability is to be paid to his or her landlord, except where it is in the overriding interests of the claimant not to make payment to the landlord.

This is a mandatory provision for direct payment and unless it is in the overriding interest of the tenant not to do so, there is no other discretion in this matter.

The landlord must provide a statement that shows the rent that is due and any payments that have been made and the amount that is outstanding is in excess of eight weeks.

Fax and e-mail are recommended means of contact for landlords when making initial contact. The local authority will suspend payment immediately and make a decision within five working days.

The amount payable to the landlord is to be restricted to the rent charged and any arrears that are outstanding. Where the LHA is greater than the rent charged the local authority will consider paying more than the rent charged, up to the value of the LHA.

The local authority must be advised of the exact level of arrears outstanding, the landlord must undertake to advise the local authority if the tenant makes any payments towards the level of arrears.

The case will be monitored to ensure that any excess is not paid to the landlord once the arrears have been cleared.

Process where claimant is eight weeks in arrears

