

Local Housing Allowance

Safeguards For Tenants & Landlords

A Policy Document on behalf of Dorset Authorities

Version April 2011



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Section 1 - Introduction

- 1.1 The Local Housing Allowance (LHA) is a scheme of Housing Benefit for people living in private rented sector accommodation.
- 1.2 It is a fundamental principle of the LHA scheme that payment of benefit is generally made to the tenant. Tenants are encouraged to have payments made directly into a bank account as a safer and quicker method of payment. **Tenants cannot simply request that payment is made to a landlord to cover their rent.** However, it is recognised that direct payments of Housing Benefit to landlords can assist in creating and maintaining viable tenancies.
- 1.3 Advice and support will be given to tenants on accessing a basic bank account, the importance of paying their rent to their landlord and the consequences if they do not. Tenants will also be directed to other organisations that could offer support and advice in other areas appropriate to their needs or the needs of their families.
- 1.4 To request payment direct to the landlord the tenant will be required to complete a form in addition to the claim for Housing Benefit. This form is included in the appendices and can also be requested from the relevant Local Authority or downloaded from their website.

DWP Guidance

- 1.6 In situations where a tenant either cannot pay their rent or is unlikely to pay, the Department for Work and Pensions has provided guidance on when direct payments to the landlord may be appropriate. In these cases the Local Authority must decide who will be the appropriate person to receive payments.

However, the LHA must be paid to the landlord where:

- The tenant is 8 full weeks or more in arrears with their rent and it is in the tenant's interest to do so.
- The tenant is having deductions made from their Income Support or Jobseeker's Allowance to pay for rent arrears

- 1.7 Additionally, from April 2011 the regulations provide that the local authority can pay the landlord direct where it considers that it will assist the claimant in securing or retaining a tenancy. This new safeguard provision has been introduced in connection with new regulations that have resulted in lower LHA rates and is intended to exert a downward pressure on rents for HB customers when the new lower rates take effect. It is also intended that the new safeguard provision could encourage landlords to let at rent levels that HB tenants can afford or open up a new let to HB customers.

Policy

- 1.8 This policy, on behalf of Dorset Local Authorities, will ensure that the safeguards in place are applied correctly, to prevent the risk of tenants falling into arrears with their rent and losing their home due to eviction and to allay any fears that landlords may have regarding potentially vulnerable tenants and those who are unlikely to pay.
- 1.9 The circumstances where consideration will be given to making payment to a landlord are where:

- **The tenant is 8 weeks in arrears with their rent or the tenant is having deductions made from their Income Support or Jobseeker's Allowance to pay for rent arrears.** It is a requirement in such cases that benefit payments are made to the landlord.
- **The tenant is unlikely to pay their rent** because either they have rent arrears and have consistently failed to pay or they have a history of arrears with previous landlords.
- **The tenant is unable to pay their rent** because they are considered to be vulnerable and unable to manage their own affairs.
- **To safeguard the tenancy.** Either an existing tenancy is at risk unless direct payments are made or a new tenancy is unable to be secured without an agreement for direct payment to the landlord. For a tenancy to be secured or retained it is implicit that the rent should be affordable to the tenant.

- 1.10 The aim of the policy is to:

- Provide a safeguard for vulnerable tenants to sustain their tenancies and reassure them that their housing benefit will be paid
- To assist in the prevention of homelessness, to enable viable tenancies which can be maintained at affordable rent levels.

This will be achieved by:

- ♦ Helping tenants take responsibility for receiving direct payments of LHA and where appropriate, directing them to agencies that give people support to manage their own affairs.
- ♦ Reassuring landlords that Housing benefit can be paid to them if they have vulnerable tenants.
- ♦ Working with landlords where the tenant fails to pay the rent.

Direct payment may also be promoted as a means of achieving affordable rent levels for tenants in receipt of Housing Benefit.

We will promote a transparent and simple process that is widely understood to ensure decisions are reasonable, fair and consistent. We will ensure that written rules and procedures exist which reflect the policies. This should compliment the work that other sections and departments undertake within the Local Authority and will contribute towards the prevention of homelessness and work towards a safe and decent homes standard.

We will assist the transition from non-working to working and provide advice and support to people throughout the process.

Each case will be treated individually and we will not make assumptions about people's situations. Information will be gathered sensitively and conform to the data protection principles and the benefit regulations. We will ensure vulnerable people are treated with respect and consider every customer's rights.

- 1.11 This last point links strongly with each of the Dorset Authority's individual strategies and plans, part of which provide a framework for the improvement of people's quality of life and caring for those most in need in the county of Dorset. Housing and Council Tax benefit has an important part to play as it provides vulnerable people with funds to enable them to secure accommodation.
- 1.12 The policy is not intended to
- Replace support that may be being provided to tenants in managing their everyday affairs and finances
 - Be used by landlords to avoid and abuse the aims and objectives of the LHA
 - Be a blanket policy for organisations providing support to private tenants
 - Undermine the good work that is already being undertaken within other sections and departments of the Local Authority
 - Undermine the rights of tenants to receive payment directly to themselves.

Gathering evidence

- 1.13 The Authority will gather any further information and evidence necessary to make an informed decision. This will involve asking for receipts of payments made from the tenant, seeking records of the arrears from the landlord and details of any negotiations between parties to achieve an affordable level of rent. It is strongly recommended that landlords maintain full documented records of tenant's rent payments to support any request made.
- 1.14 The tenant may also be interviewed to gather further information. If it is felt necessary, an interview will be arranged with the tenant, the tenant's representative, the landlord, or all parties to satisfy the evidence required to make the appropriate decision.
- 1.15 Both the landlord and the tenant will be given one calendar month to provide any information or evidence requested.

Interim payments

- 1.16 The process of gathering evidence to support a request to pay the landlord may take time. The Local Authority has the ability to make payments to the landlord for a maximum of 8 weeks whilst a decision is being made.
- 1.17 The Local Authority also has the discretion to make the first payment of LHA to the landlord where it appears that the tenant has not paid any rent. Although the payment will be made in the landlord's name, notification will be sent to the tenant's home address. Where the amount of the first payment exceeds £500 the Local Authority will consider sending the payment in the landlord's name.

Local Authority makes decision to pay LHA to the Landlord.

- 1.18 Payments will be made directly into the landlord's nominated bank account
- 1.19 Letters will be sent to the tenant and landlord within 7 days of the date the decision advising:
- the decision
 - the date it will be reviewed
 - Dispute rights

Review

- 1.20 Decisions to pay LHA to the landlord will be reviewed as appropriate to the case and the payment direction may be changed to the tenant following this review. The date of the review will be set by the Local Authority based on the individual circumstances of the tenant. Both parties will be advised in writing if the payment direction is to be changed and both parties have the right to ask for the decision to be reviewed.

Appeals

- 1.21 Any persons affected by the decision about who should receive the payment of Local Housing Allowance can ask the Local Authority to review the decision made. This includes claimants and landlords.
- 1.22 They can:
- Ask for an explanation of the decision
 - Ask the Local Authority to reconsider the decision
 - Appeal against the decision
- 1.24 In all cases the person must contact the Local Authority, in writing, with their reasons within one month from the date of the decision. The decision will then be reviewed.

Section 2 - Tenant is in arrears

Receiving notification that the tenant is in arrears with their rent

- 2.1 When a tenant has arrears of 8 weeks or more payments must be made direct to the landlord. However, the LA may make direct payments before the full 8 weeks if it apparent that there are significant arrears and they are likely to increase. Landlords are encouraged to notify the relevant Benefits Section at the earliest opportunity if a tenant is not paying their rent. **Landlords are not required** to wait until the tenant is 8 weeks in arrears before notifying the Local Authority that their tenant is behind in their rent payments.
- 2.2 The period of 8 weeks is based on the contractual rent periods of the tenancy. For example, if the rent is charged calendar monthly in advance, the tenant **may** be

considered 8 weeks in arrears once the second payment date without payment has passed. Although there may be cases where the tenancy states that the rent is charged 8 weeks in advance, the LA will investigate that these are genuine and have not been contrived to take advantage of this rule. This could mean a landlord fails the fit and proper landlord test and would prevent payments direct.

- 2.3 A form (appendix 3) is available on our websites which should be completed and sent to the relevant authority. Alternatively a landlord can telephone or email to ask for this form. Payments will either be switched directly to the landlord or suspended, whichever is deemed most appropriate. Where payment is switched this will initially be for a maximum of 12 weeks whilst evidence is gathered to make a final decision.

Making a decision

- 2.3 When considering any evidence, the Local Authority will take into account the past behaviour of the tenant; have they had previous arrears, do they continually miss payments or do they have any other known underlying debt indicators.
- 2.4 Based on all the evidence gathered the Local Authority will decide whether to make payment of benefit to the landlord.
- 2.6 The reasons for any decision will be recorded to ensure that reviews of the decision are undertaken as appropriate.
- 2.7 Where a final decision cannot be made before the next payment is due to be paid, the next payment will be made to the landlord.

Section 3 – Tenant is unlikely to pay

Receiving an application for LHA to be paid to the Landlord

- 3.1 A request for payment to the landlord where the tenant is unlikely to pay can be made by the landlord, the tenant or the tenant's representative. Landlords are encouraged to notify the Benefits Section at the earliest opportunity if they believe a tenant is unlikely to pay their rent.
- 3.2 Where the Local Authority considers that the rent payments are at risk, the Local Authority may pay the landlord direct for a maximum of 12 weeks, whilst the process for considering the safeguard of future payments is established.
- 3.3 Where a request is made for direct payment on the grounds of "unlikely to pay" evidence from the landlord must be provided and agreement from the tenant may be sought.
- 3.4 A form (appendix 3) is available on our websites which should be completed and sent to the relevant authority. Alternatively a landlord, tenant or tenant's representative can telephone or email to ask for this form. Where a request for direct payment on the grounds of "unlikely to pay" is made, evidence from the landlord must be provided and agreement from the tenant may be provided. Any request will be acknowledged within 7 days.

Making a decision

- 3.5 When considering any evidence, the Local Authority will take into account the past behaviour of the tenant; whether they have had previous arrears, do they continually miss payments or do they have any other known underlying debt indicators.
- 3.6 Based on all the evidence gathered the Local Authority will decide whether payment of benefit to the landlord is in the best interests of the tenant.
- 3.7 The reasons for any decision will be recorded to ensure that reviews of the decision are undertaken at the correct time.

Section 4 – Tenant is unable to pay their rent

Receiving an application to pay LHA direct to Landlord

- 4.1 There are situations where the tenant has difficulty managing their affairs, this may include:
 - People with medical conditions such as mental ill health or terminal illnesses
 - People with a learning disability
 - People with a physical disability or who may be housebound
 - Literacy or language difficulties
 - People with an alcohol/drugs or gambling addiction
 - People fleeing domestic violence and who have the support of either the police, or a statutory or voluntary agency
 - People being supported by a statutory or voluntary agency, such as young care leavers/single homeless adults and families
 - Prison Leavers being supported by an appropriate organisation or agency
 - People who have a temporary change in their life such as a relationship breakdown, bereavement or employment change which may mean they need support on a short-term basis
 - People who have financial difficulties, severe debt problems or are bankrupt.

This list is not exhaustive and there may be other causes of vulnerability that prevent the tenant from receiving direct payments of the Local Housing Allowance.

Each and every case will be considered on its own merits. Local Authorities **cannot** have a blanket policy approach to cases of vulnerability.

- 4.2 The tenant, landlord or tenant's representative can make a request for direct payment of LHA to be made to the landlord where the tenant is likely to have difficulty managing their affairs. To establish this they will be required to complete an application form (appendix 3). Where a request for direct payment on the grounds of vulnerability or financial difficulty is received from a representative of the tenant the third party must have written authority from the tenant to act on their behalf.

- 4.3 In all cases the request must include written evidence, from an appropriate source, to support the application. See appendix 1 for suggested evidence and sources in support of a request on the grounds of vulnerability. The request will be acknowledged within 7 days of receipt.

Making a decision

- 4.4 Based on all the evidence gathered the Local Authority will decide whether the payment of benefit directly to the landlord is in the best interests of the tenant.
- 4.5 For those tenants where it has been established that they are vulnerable and unable to manage their own affairs:
- The Local Authority, through consultation with all parties involved and consideration of the type and length of support provided to a tenant, will decide whether the vulnerability is short-term or long-term. This decision will determine the period at which the case is reviewed. However, in some cases the situation will not change and therefore cases may be reviewed on a longer term basis of up to 5 years.
 - For those tenants who have financial difficulties, severe debt problems, County Court Judgements or bankruptcy, the tenant will initially be supported and advised on accessing a basic bank account. However, if this is not successful the tenant will be referred to other support such as the Citizens Advice Bureau (CAB), or National Debtline.

Section 5 – Safeguarding the Tenancy

- 5.1 Where a person obtains a private tenancy with the 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. Merely contacting the local housing authority would be insufficient. It must be established that the tenant received assistance in obtaining a private tenancy, or that the tenancy would not have been provided without the intervention of the local housing authority.
- 5.2 From April 2011 the regulations pertaining to direct payments have been widened so that LAs can make payment direct to the landlord where they consider that it will assist the customer in securing or retaining a tenancy. For a tenancy to be secured or retained it is implicit that the rent should be affordable to the tenant. Further guidance on securing and maintaining tenancies at affordable rent levels is given in appendix 2. This additional provision is a temporary provision which will remain in place until longer-term decisions are made by the government about direct payments within the context of the delivery of the planned replacement for Housing Benefit, Universal Credit.
- 5.3 The Local Authorities have arrangements with their Homeless Teams to allow them to decide on the payment direction. This decision will be subject to review in accordance with the DWP guidance.

Section 6 - Reviewing a Decision

- 6.1 The tenant and/or representative will be contacted again one month before the end of the review period to determine whether their situation has changed and if they can receive direct payment of LHA. Any allowance due will continue to be paid directly to the landlord until the review process is completed.
- 6.2 Where the tenant has a Severe Medical Impairment, the Local Authority may decide that the decision to make payments direct to the landlord will be for an indefinite period and not subject to review.
- 6.3 Tenants will not be required to complete an application form. In the first instance we will write to the tenant or their representative or support worker to get an update of the situation. If the situation has not changed, a further review period will be set.
- 6.4 Where the circumstances of the tenant have changed, which means they can accept the responsibility of direct payments and pay the rent to their landlord, we will make a new decision to pay the LHA to the tenant. If it is identified that the tenant may require further support or advice, then the tenant will be directed to the relevant section, team or organisation.
- 6.5 All affected parties will be notified in writing within 7 days of the decision being made.

Appendix 1 - Vulnerability indicators

Vulnerability Indicators

Vulnerability Criteria	Written evidence Recommended
Learning Disability	<ul style="list-style-type: none"> • Adult Services • Care Workers • DWP • GP (a cost may be incurred)
Medical Condition i.e., Mental health problems	<ul style="list-style-type: none"> • Social Services • Care Workers • Hospital • DWP • Support Organisations • GP (a cost may be incurred)
Addiction problems i.e., Drugs, Gambling, Alcohol	<ul style="list-style-type: none"> • Social Services • Hospital • Police • Care Workers • Support Organisations • GP (a cost may be incurred)
Fleeing Domestic Violence	<ul style="list-style-type: none"> • Police • Social Services • Support Organisations • DWP • Solicitor • GP (a cost may be incurred)
Care Leavers / single < 25 homeless	<ul style="list-style-type: none"> • Social Services • Homeless Team • Support Organisations / Homeless charities • GP (a cost may be incurred)
Prison Leavers	<ul style="list-style-type: none"> • Social Services • Probation Service • Support Organisations
Severe Debt Problems i.e. CCJ's	<ul style="list-style-type: none"> • Courts • Banks / Building Societies • Solicitors • Creditors • Support Organisations ie CAB, CLC
Undischarged Bankruptcy	<ul style="list-style-type: none"> • Court Order documents
Inability to open a Bank Account	<ul style="list-style-type: none"> • Evidence from banks / building societies • Money Management / Welfare and Information Centres
Where DWP is making a deduction from benefits and paying direct to utility company	<ul style="list-style-type: none"> • DWP • CIS • Job CentrePlus
Tenant is in receipt of Supporting People funding	<ul style="list-style-type: none"> • Support Organisation • GP • Social Services • Supporting People Section

Appendix 2 – Securing or retaining affordable tenancies

From 1 April 2011 the discretion to pay landlords direct has been widened so that LAs can make payment direct to the landlord where they consider that it will assist the customer in securing or retaining a tenancy. Guidance received from the Department for Work and Pensions (Circular A4/2011) states that for a tenancy to be secured or retained it is implicit that the rent should be affordable to the tenant and that this additional discretion is a temporary provision until longer-term decisions about direct payments are made for Universal Credit.

The new discretion has been given in conjunction with changes being made to LHA rates that will result in lower entitlements for HB tenants.

The changes to LHA rates will mean that some existing customers will have a new or greater shortfall between their HB entitlement and their contractual rent. Some may need to move, but in other cases it may be possible for the tenant (perhaps with specialist help, for example from the council's Housing team or other advisory agencies) to negotiate with the landlord a reduction in the rent to a level which the customer can afford. The new safeguard provision could facilitate the negotiation, as some landlords may agree a reduction in the contractual rent in exchange for benefit being paid directly to them. In other cases, the new provision could encourage landlords to let at rent levels that HB tenants can afford or to open up a let to benefit recipients in the first place.

A benefit customer can only be accepted as being able to retain or secure a tenancy if the rent is at a level that the local authority considers a tenant can reasonably afford whilst in receipt of HB. If the tenant continues to have a shortfall which they cannot meet they will be unlikely to be able to meet their rental commitment and will be at risk of eviction. In these circumstances, they will not be able to retain the tenancy and so this safeguard could not apply. However the local authority will need to consider whether direct payment is appropriate under the other safeguarding provisions if the tenant has arrears or may be unable or unlikely to pay their rent.

If the local authority is aware that the landlord has routinely let to HB customers at affordable rents without direct payments it would be reasonable to expect that they would continue to take on new tenants without direct payments. It is not the intention that the safeguard be used to make payment to the landlord as a matter of routine.

What is an affordable rent?

The rent should be at a level which is affordable to the tenant. In the majority of cases this will be the LHA rate which applies to the customer and on which their maximum rent determination is based. However, some tenants may decide that they can pay slightly more than the LHA rate if they have other resources. For example, if they have resources such as capital to meet a shortfall. The local authority must be satisfied that the rent is affordable to the customer before agreeing to make direct payments under this provision.

Reviewing the decision following rent increases and changes in the tenants circumstances

It will be necessary for the local authority to review the decision if the rent increases or there is a change in circumstances that results in the tenant requiring different sized accommodation. This review will ensure that if the rent remains affordable to the tenant, and therefore the tenancy remains viable, that direct payments is still appropriate.

Appendix 3 - Application for Direct Payments of Local Housing Allowance to a Landlord

What is this form for?

The Benefits Service has to make all payments of Local Housing Allowance (LHA) directly to the tenant, but in certain circumstances we can make payments direct to the landlord. The information you provide in this form will help us decide whether it is appropriate to pay LHA direct to the landlord. As each case will be different and is judged on its own merits, please try to provide as much information and evidence as possible.

Who can complete it?

This form can be completed by anyone, but in some circumstances the tenant must sign it. Regardless of whether or not the tenant has to sign the form, they should be fully aware that the form is being completed and this may lead to their benefit being paid directly to the landlord.

What's vulnerability?

This is usually where a person has other matters to contend with, which may mean that for a period of time they are unable to deal with their finances. Vulnerability indicators may include, having a learning disability, mental health problems, addiction (drugs/alcohol/gambling), fleeing domestic violence, care leavers, prison leavers, severe debt problems (CCJs), undischarged bankruptcy, inability to open a bank account or in receipt of Supporting People funding. This list is not exhaustive and is only a guide.

What evidence do you need?

Should direct payments be required as you consider the tenant to be vulnerable, some evidence of the vulnerability may be required. This could be in the form of a letter from their main carer, an advice or welfare agency or a letter from their GP. Any evidence supplied will support the request, so it should be submitted with the completed form. Please refer to appendix 1 of the Safeguard Policy for further guidance on evidence.

If you are completing the form because the tenant is in arrears, we will need evidence of those arrears. A statement of their rent account should suffice. Whilst payments must be paid direct to the landlord where there are 8 weeks arrears, please do not wait until the 8 weeks have accrued before advising us. If possible advise us when the tenant is 4-5 weeks in arrears.

This form should be completed and returned with any supporting evidence to your local authority.

Bournemouth Borough Council
Benefits Services
Town Hall
St Stephens Road
Bournemouth, BH2 6EB

Christchurch, East and North Dorset Council's have merged to form the Stour Valley Partnership

Stour Valley Partnership
PO Box 7466
Blandford Forum
DT11 1BW

Poole Borough Council
Benefits Service
Financial Services
Civic Centre
Poole
BH15 2YE

Purbeck District Council
Benefits Service
Westport House
Worgret Road
Wareham
BH20 4PP

West Dorset
Benefits Service
Glyde Path House
Glyde Path Road
Dorchester
DT1 1JB

Weymouth District Council
Benefits Service
Council Offices
North Quay
Weymouth
DT4 8TA

Tenants request for payment to landlord

Why payment is to be made direct to the landlord (please tick all that apply)

8 Weeks in Arrears (go to Part 1)	<input type="checkbox"/>	To Safeguard a Tenancy (go to Part 2)	<input type="checkbox"/>
Unable to Pay (go to Part 3)	<input type="checkbox"/>	Unlikely to Pay (go to Part 4)	<input type="checkbox"/>

Claim Reference if known

Circle as appropriate

New home / Existing home

Your First Name Partner First Name

Your Surname Partner Surname

Address

Postcode

Telephone Number

Landlords Name and Address

Part 1. 8 Weeks in Arrears

Amount of Rent £ Frequency Weekly / 4 weekly / calendar monthly

What arrears do you have and the period they cover? (evidence will be required)

What action has the landlord taken to recover the arrears and any arrangements made?

Part 2. To Safeguard a Tenancy

**Please explain why direct payments will mean you can secure or keep your tenancy.
Has the rent been reduced to the Local Housing Allowance level? YES / NO
Is the tenancy affordable to you YES / NO
Did you seek independent advice (i.e. CAB or the Council's Housing Team) YES / NO**

Part 3. Unable to Pay

Please explain why you consider you are unable to pay (details of vulnerability, financial difficulties etc)

Part 4. Unlikely to Pay (evidence and agreement by the tenant will be required)

Please explain why you consider you are unlikely to pay (debts, previous experience etc)

Declarations

Person Assisting Declaration

- The information given is true and correct
- I believe it to be in my best interests to pay Local Housing Allowance directly to my landlord.

I have read and understood the declaration.

Name

Signed

Date

Landlords request for direct payments

Why payment is to be made direct to the landlord (please tick all that apply)

8 Weeks in Arrears (go to Part 1)	<input type="checkbox"/>	To Safeguard a Tenancy (go to Part 2)	<input type="checkbox"/>
Unable to Pay (go to Part 3)	<input type="checkbox"/>	Unlikely to Pay (go to Part 4)	<input type="checkbox"/>

Claim Reference if known

Circle as appropriate

New home / **Existing home**

Tenants First Name	<input type="text"/>	Partner First Name	<input type="text"/>
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Tenants Surname	<input type="text"/>	Partner Surname	<input type="text"/>
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Address

Postcode

Telephone Number	<input type="text"/>
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Landlords Name and Address

Part 1. 8 Weeks in Arrears

Amount of Rent	£ <input type="text"/>	Frequency	<input type="checkbox"/> Weekly / <input type="checkbox"/> 4 weekly / <input type="checkbox"/> calendar monthly
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What arrears do they have and the period they cover? (evidence will be required)

What action have you taken to recover the arrears and any arrangements made?

Part 2. To Safeguard a Tenancy

Please explain why direct payments will secure or keep the tenancy.
Has the rent been reduced to the Local Housing Allowance level? YES / NO
Is the tenancy affordable to the tenant YES / NO
Has independent advice been sought (i.e. CAB or the Council's Housing Team) YES / NO

Part 3. Unable to Pay

Please explain why you consider the tenant will be unable to pay (details of vulnerability, financial difficulties etc)

Part 4. Unlikely to Pay (evidence and agreement by the tenant will be required)

Please explain why you consider the tenant is unlikely to pay (debts, previous experience etc)

Tenants Signature

Date

Declarations

Person Assisting Declaration

- The information given is true and correct
- I believe it to be in the best interests of the tenant/claimant to pay Local Housing Allowance directly to me, their landlord.

I have read and understood the declaration.

Name

Signed

Date