



Hinckley & Bosworth
Borough Council

A Borough to be proud of

Appendices to report

Review & realignment of existing policies (revenues & benefits service).

Appendices A to G

This page is intentionally left blank

APPENDIX A

DISCRETIONARY HOUSING PAYMENTS: GUIDELINES

Introduction

This document sets out the procedure for discretionary housing payments (DHPs) that are intended to provide claimants with further financial assistance, in addition to any welfare benefits, when an authority considers that help with housing costs is required. DHPs are made at the discretion of the authority and their purpose is to ensure that those who claim universal credit (UC) and/or housing benefit (HB) do not suffer high levels of hardship where there is a shortfall between the amount of rent due and the amount of benefit being paid.

Following the abolition of CTB from April 2013, DHPs are no longer made towards council tax liability.

Background

DHP can be awarded to private tenants, council tenants and housing association tenants.

The use of DHP is directed by government guidance and a local policy. The Discretionary Financial Assistance Regulations 2001 ('the regulations') provide the legal framework that allows DHPs to be made.

What is meant by 'housing costs?'

Housing costs are not defined in the regulations and this gives the Leicestershire Partnership authorities a broad discretion to interpret the term as they wish. If the customer is getting Housing Benefit (HB) housing costs mean rent (subject to certain exclusions). However, housing costs can be interpreted more widely to include:

- rent in advance
- deposits
- other lump sum costs associated with a housing need such as removal costs.

The use of discretion in making DHP decisions

The regulations provide a very broad discretion in DHP decision making. The local authorities within the Leicestershire Partnership are committed to transparency and consistency of approach in its decision making around DHP. They will make their decisions in accordance with ordinary principles about good decision making and in line with the duty to act fairly, reasonably and consistently. Each case will be decided on its own merits and the decision making will be consistent throughout the year.

Support for all tenancy types

DHP will be used by the Partnership authorities to manage the impact of welfare reform on private sector, council and other social housing tenants.

Support for specific groups affected by welfare reform changes

The Partnership authorities have limited 'baseline' funding to provide support for customer's unspecified circumstances. Following recent welfare reforms the Government funding contribution has been increased to support specific groups of people, as follows:

- those affected by local housing allowance reductions;
- those affected by the benefit cap; and
- those affected by the size criteria in social rented sector

The awards application process for funding under any of these headings will be the same; the Partnership authorities will consider the responses to a range of DHP criteria questions to establish whether the applicant is eligible for DHP support, after which the level of financial assistance will be determined by the financial calculation statement. The expectation is that those in receipt of Disabled Living Allowance/Personal Independence Payment will incur additional housing costs to accommodate their individual needs.

General 'baseline' funding

The Partnership authorities have general discretion to make awards from this funding stream. The funding is not limited to any specific groups of people.

Local Housing Allowance (LHA) restrictions

Major changes have come into effect for Housing Benefit. They signal the start of a radical transformation of Welfare Benefits leading up to the introduction of Universal Credit.

Recent changes include:

- setting LHA at the 30th percentile of rents in each Broad Rental Market Area, rather than the median as was previously used;
- increases in the amount deducted in non-dependant deductions;
- an absolute upper limit on the amount of Housing Benefit that can be paid out for any family receiving LHA;
- freezing LHA rates for the year from April 2012, in advance of new annual uprating from April 2013; and
- an increase from 25 years to 35 years in the relevant age for the LHA shared room rate.

The Partnership authorities are receiving an increase in demand for DHPs as a result of these changes. It may not be possible to meet the demand in full from the funds available. Awards will be made on a discretionary basis. Each case will be decided on its own merits and the decision making will be consistent throughout the year.

The Benefit Cap

From July 2013 total household benefit payments for working-age claimants have been capped so that workless households will no longer be entitled to receive more in benefit than the average weekly wage, after tax and national insurance. Initially the cap will be administered by local authorities through housing benefit payments. From October 2013 the cap will be applied through Universal Credit, starting with all claimants setting up a Universal Credit account including those migrated from existing benefits. Total entitlement to benefit payments will be capped at £500 per week for couples and lone parent households. The level of entitlement for single adults will be capped at £350 per week.

Changes to DHP funding are intended to provide short-term, temporary relief to families who may face a variety of challenges which prevent them from being able to move immediately or to help manage families move into more appropriate accommodation. It is specifically aimed at a number of groups who are likely to be particularly affected by the benefit cap. These include (but are not limited to):

- Those in supported, exempt or temporary accommodation;
- Individuals or families fleeing domestic violence;
- Those with kinship care responsibilities;
- Individuals or families who cannot move immediately for reasons of health, education or child protection;
- Households moving to more appropriate accommodation.

The size criteria in the social rented sector

From April 2013 the Government introduced size criteria for new and existing working age Housing Benefit claimants living in the social rented sector. The size criteria has replicated the size criteria that applies to Housing Benefit claimants in the private rented sector and whose claims are assessed using the local housing allowance rules. The applicable maximum rent will be reduced by a national percentage rate depending on the number of spare bedrooms in the household.

This additional resource is intended for those affected by this measure who are unlikely to be able to meet the shortfall and for whom moving to a smaller property may be inappropriate. It is aimed specifically at - disabled people living in significantly adapted accommodation (including any adaptations made for disabled children); to allow for an extra bedroom for a foster child or children of an approved foster carer and to ensure that the parents of armed forces personnel who are away from home on active duty.

Additional funding has been included in the DWP DHP allocation to cover 'size criteria' which is being made available for two years effective from April 2013.

Spending the full Government DHP allocations

During the course of a financial year the Partnership authorities will aim to spend as a minimum the full allocation of government DHP funding in respect of these relevant groups. The authorities may also decide to contribute an additional amount up to a cash limit of two and a half times the government's baseline funding contribution; but they are not bound to do so.

Objectives to be considered when deciding DHP awards

The Department for Work and Pensions (DWP) have identified certain objectives that authorities may wish to bear in mind when considering whether to make an award of DHP. These include:

- The alleviation of poverty
- Encouraging and sustaining people in employment
- Homelessness prevention and tenancy sustainment
- Safeguarding residents in their homes
- Helping those who are helping themselves
- Keeping families together
- Supporting domestic violence victims who are trying to move to a place of safety
- Supporting the vulnerable or the elderly in the local community
- Helping customers through personal and difficult events
- Supporting young people in the transition to adult life
- Promoting good educational outcomes for children and young people

The Partnership authorities have adopted these broad objectives as their base objectives for considering DHP awards.

These objectives contribute to the Corporate Aims of the Partnership authorities as follows:

Harborough District Council

- Priority 2 - To provide the right public service to the right standard at the right price
- Priority 4 - To support the vulnerable in our society at the heart of the communities where they live

Hinckley & Bosworth Borough Council

- Aim 2 Thriving Economy
- Aim 4 Strong and distinctive communities
- Aim 5 Decent, well managed affordable housing

North West Leicestershire District Council

- Aim 3 - Families in Need are Supported by the Council

The Leicestershire Partnership Authorities' strategy to take account of increased demand for DHP

Given the numbers of people affected by the welfare reform changes relating to benefit capping, size criteria in the social rented sector and reductions in local housing allowance, awarding DHPs to meet all shortfalls will not be a viable option.

The Partnership authorities will each consider how best to target the funding within their priority groups, whilst also ensuring that each case is considered on its own individual merits.

The Partnership authorities have identified that the following groups should be regarded as prioritised groups that could be offered assistance to stay in their home:

- families with children at a critical point in their education;
- young people leaving local authority care;
- foster carers, including those between placements;
- People going through the approval process to become foster carers who may need to show that they have a spare room to be approved;
- families with kinship care arrangements;
- families with a child temporarily in care but who is expected to return home;
- families with a social services intervention, for example highly dependent adults, children at risk or involvement in a family intervention project;
- people who have had to flee domestic violence or have moved because of the threat of violence in another area;
- where someone in the household is expecting a baby (including those currently in shared accommodation or subject to an under-occupation reduction);
- ex-homeless people being supported to settle in the community;
- people with health or medical problems who need access to local medical services or support that might not be available elsewhere;
- people with disabilities who need, or have had, significant adaptations made to their property, or where they are living in a property particularly suited to their needs.
- where the claimant or someone in their household has a disability which requires them to have a larger property than would usually be the case for the size of their household;
- people with disabilities who receive informal care and support in their current neighbourhood from family and friends which would not be available in a new area;
- households with disabled children who require an overnight carer;
- the elderly frail who have lived in the area for a long time and would find it difficult to establish support networks in a new area;
- people who need to live near their jobs because they work unsocial hours or split shifts; or where moving home may mean living in an area where public transport would be inadequate to enable them to sustain their current job.
- Single under 35's, with priority being given to the following households:
 - where the claimant is in receipt of any element of DLA

- any history of rehabilitation from drug or alcohol related dependency
- cases placed through the Homeless Teams
- those who have exhausted their options through the Homeless Prevention Fund
- those within 6 months of their 35th birthday

How a claim is made

Applications will be received, processed and determined by the Benefits Section in the partnership. Applications can be received in writing, electronically, in person; and it can be accepted from anyone who is acting on the customer's behalf. It will be necessary however for the financial calculation statement included in the DHP application form to be completed for the application to be considered. This must be signed by the claimant.

Criteria to be applied in deciding DHP awards

In order to meet the stated objectives through the DHP award process, the authorities will consider the application under a range of criteria that fall under the broad headings of:

- financial circumstances,
- prevention of homelessness,
- sustaining tenancies,
- the household's medical circumstances and
- other general circumstances

Financial circumstances criteria

The points to be considered will include but not be limited to the following:

- Does the customer have other debts to pay?
- Have they sought advice on how to clear their debts and are they actively following that advice?
- Can the customer re-negotiate non-priority debts, such as credit card agreements?
- Is the customer entitled to other welfare benefits and not claiming them?
- Do they have any capital or disregarded income that they could use to make up the shortfall (bearing in mind its intended purpose)?
- Can the claimant cut back on spending on non-essential items
- Is the customer taking long-term action to help problems in meeting their housing costs?
- Can the customer increase their hours or do any overtime?
- Is the customer in work but with high travel costs, because of split shifts for example?
- Does the application relate to anyone in receipt of any element of DLA/PIP?

Prevention of homelessness criteria

Homelessness can have a negative impact for the household concerned in terms of health, education and employment prospects. Also, temporary accommodation used to house the homeless can be expensive. Therefore, early intervention to prevent homelessness is a key issue for the Partnership authorities.

The Partnership authorities will take into account whether or not the DHP:

- Would prevent the household from being evicted and thus becoming homeless
- Would be central to the person being able to access or maintain employment, education or training and thus be less likely to become homeless;
- help to increase the long-term sustainability of accommodation occupied by households who have previously been homeless;
- relates to a case placed through the Homeless Teams
- relates to a case in which options through the Homeless Prevention Fund have been exhausted?

Sustaining tenancies criteria

There are a number of challenges to enabling people to access and sustain accommodation in the private rented sector. As at mid-2012, the housing department in one Partnership authority reported that an increasing number of landlords are choosing to end tenancies, for example because they wish to sell the property. This has been identified as one of the main reasons for homelessness in the district.

The current welfare reform measures are expected to reduce benefit paid to those living in the sector. Housing benefit claimants currently occupy about 40% of the 3.6m homes in Great Britain's private rented sector (PRS) and the Government's own equality impact assessment shows that the measures are likely to reduce payments to virtually all private tenants who claim Local Housing Allowance, with an average cut of £12 a week per claimant.

The Partnership authorities will take into account:

- whether or not the DHP would enable the accommodation to become affordable in the interim, allowing the tenant time to find alternative accommodation
- Whether the tenant could leave the tenancy without incurring a financial penalty
- Whether the tenant could afford the tenancy before they took it on.

As part of linked work to sustain tenancies, the Partnership authorities will work to develop sustainable tenancy strategies between their housing advice, landlord services and homelessness sections, and local homelessness organisations and those operating rent deposit schemes in the local area. They will also provide help to customers to negotiate a lower rent if the customer feels unable to attempt to do so themselves.

Household medical circumstances criteria

The Partnership authorities will determine whether any of a range of points applies, including the following:

- Does the household have health or support needs which require them to remain in a particular property?
- Does the household have a health problem which means that the choice of housing is restricted either temporarily or permanently?
- Does the customer require an extra room because of a health problem that affects them or a member of their household?
- Does the household have to live where they do because of the need for access to medical or support services – for example a particular hospital?
- Does the household have extra health-related expenses, such as the need for therapeutic classes or non-prescription medicine?
- Does the application relate to anyone having a history of rehabilitation from drug or alcohol related dependency?

'Other circumstances' criteria

When deciding whether to award DHP, the Partnership authorities will determine whether any of a range of points apply, including the following:

- Is the customer fleeing domestic violence so they do not have time to shop around for a reasonably priced property?
- Does the household have to live in a particular area because the community gives them support or helps them contribute to the district?
- Is the customer expecting a child and had her HB restricted to that of smaller accommodation until the child is born?
- Is the customer a single person living in an area where there is a shortage of shared accommodation?
- Is the customer a care leaver who has a reduction in their LHA rate after becoming 22 years old?
- Is there is a particular reason that the customer chose to live in this accommodation?
- Is the property the cheapest available in the area for the household's needs?
- Does living in the area mean a better chance of employment?
- Would it be helpful to pay DHPs when a training scheme is almost, but not yet complete?
- Would it be helpful to pay DHP where the household contains children at a critical point in their education?
- Is someone in the household undertaking care duties for relatives in the neighbourhood?
- Is the person under 35 expecting a baby?

Financial calculation statement

To ensure that a consistent approach to applications is maintained, a DHP financial calculation statement must be completed. This will provide information regarding the customer's income from all sources, which will be compared against expenditure to determine if there is a shortfall of income against expenditure. Items of non-essential spending may be disregarded.

The Council will consider if the amounts of expenditure for specific items seem accurate and realistic, taking into account the size and circumstances of the household. Further explanation or evidence of expenditure may be requested and if no suitable evidence or explanation is provided, a more reasonable figure for the item in question may be used instead.

The application will then be processed, taking into consideration the level of the shortfall between expenses and income.

Items of expenditure that may be deemed to be non-essential include: social and entertainment expenditure; pocket money for children; Gym membership; Sports and club membership; alcohol; cigarettes and tobacco; private medical or dental healthcare

The Partnership authorities will include all income which will also include that from disability related benefits. They will also take into account all reasonable costs suitable for the circumstances of the household.

Overpayments of HB

Regard will be had to any outstanding overpayments, as reducing the rate of recovery may be a better approach than a DHP award. DHP cannot be used to repay an overpayment. .

The level of a DHP

The DHP will not exceed the weekly eligible rent.

Deciding the period of payment

The length of time over which an award of DHPs will be paid will depend upon the circumstances of the individual case. The Partnership authorities will consider:

- whether the need is likely to be short-term;
- whether the customer is likely to require assistance in meeting their housing costs for as long as they remain in the property;

- whether it could be paid until the earliest opportunity that cheaper accommodation could reasonably be sought;
- whether it could be paid until a particular milestone, such as the end of training, first possible break clause in a tenancy, etc.

Anticipated changes of circumstances which affect the customer's income or benefit entitlement must be taken into consideration when determining the period of time over which the award is to be made. Where this is likely a review must be undertaken following the change of circumstances to determine if the amount of DHP is still appropriate.

A previous award of DHP or a refusal of an award will not affect any subsequent application.

When a DHP payment can start

A payment can only be considered for a period where there is a linked entitlement to HB or UC.

What DHPs cannot cover

Ineligible charges: service charges that are ineligible for HB cannot be covered by a DHP. These are as specified in Schedule 1 to the Housing Benefit Regulations 2006 and Schedule 1 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. Nor can DHPs cover charges for water, sewerage, and environmental services – as defined and calculated under the HB provisions.

Increases in rent due to outstanding rent arrears: Regulation 11(3) of the Housing Benefit Regulations 2006 and Regulation 11(2) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 refer. This refers to those cases where a claimant's rent is increased on account of outstanding arrears which are owed by the claimant in respect of their current or former property.

Sanctions and reductions in benefit: DHPs cannot meet these because to do so would undermine the effectiveness of the sanctions or reduction in benefit. These are:

- any reduction in Income Support (IS) or income-based Jobseeker's Allowance (JSA(IB)) due to a Reduced Benefit Direction (RBD) for failure to comply with the Child Support Agency in arranging maintenance. The RBD is a reduction in benefit of 40% of the personal allowance and only applies to IS or JSA(IB)
- any reduction in benefit as a result of non-attendance at a work-focused interview. This applies both where the person's HB/CTB is reduced and when any other benefit that the person is receiving, such as IS is subject to a sanction

- any reduction or loss of benefit due to a JSA employment sanction. JSA is not payable for the period of sanction if they have contributed towards their unemployed status, for example, by leaving employment voluntarily or failing to attend a prescribed training scheme. In such cases, it may be possible for a reduced rate of JSA to be paid under the JSA hardship provisions
- any reduction in benefit due to a JSA sanction for 16/17 year olds – for certain young people who receive JSA under a Severe Hardship Direction. JSA is not payable for the period of the sanction if they have contributed towards their unemployed status, for example, by leaving unemployment voluntarily or failing to attend a prescribed training scheme, or
- any restriction in benefit due to a breach of a community service order

Benefit suspensions: HB can be suspended either because there is a general doubt about entitlement or because a claimant has failed to supply information pertinent to their claim. In such cases, it would not be permissible to pay DHPs instead. One of the intentions of the suspension provisions is to act as a lever to ensure that the claimant takes the necessary steps to provide the authority with the necessary information/evidence - paying DHPs could reduce the effectiveness of this lever.

Shortfalls caused by HB overpayment recovery: When recovery of an HB overpayment is taking place, such shortfalls should not be considered for a DHP.

Disputes Process

A Benefits Team Leader will consider the DHP application and advise the claimant of the decision in writing as soon as is reasonably practical, stating the reasons for a negative decision.

The customer can request a reconsideration of the decision, or of a cancellation or recovery of DHP. Details about the process for requesting a reconsideration and the timescale to be followed will be provided to the customer when the negative decision is communicated to the customer. The decision will be examined again in the light of any new representations made by the customer.

This request for reconsideration should be made within a calendar month of the initial decision. The reconsideration will be made in line with the normal reconsideration and appeals process and will be undertaken by a different Benefits Team leader.

If a further dispute is received following the reconsideration, the case will be passed to the Senior Management team for review. The next stages in a dispute would be going to Judicial Review, or to the local government ombudsman if there is an allegation of maladministration.

Stopping the payment of a DHP

There are instances other than a change of circumstances when DHPs can be stopped.

The Partnership authorities will stop making any further DHPs:

- if it decided that DHPs are being, and/or have been, made because someone has misrepresented or failed to disclose a material fact, fraudulently or otherwise
- when they have been paid as a result of an error.

Overpaid DHPs

The Partnership authorities will recover DHPs if they decide that payment has been made as a result of misrepresentation or failure to disclose a material fact, either fraudulently or otherwise. The authorities may also recover DHPs if it is decided they have been paid as a result of an error made when the claim was determined.

DHPs cannot be recovered from on-going HB, nor from other prescribed benefits. Therefore the only method of recovery if a DHP is overpaid is to request repayment of the debt from the claimant. The Partnership authorities may choose to pursue recovery via the courts and debt collection agencies.

Monitoring and reviewing how DHP is being used

DWP will monitor how DHPs are being used to support customers affected by the welfare reforms. In addition to the annual DHP claim form, LAs will need to provide a broad breakdown of their expenditure. Following a successful application for DHPs, the Partnership authorities will record the main reason for the award, as detailed below:

- to support customer affected by benefit cap
- to support customer affected by social sector size criteria
- to support customer affected by LHA reforms
- any other reason

Over and above this mandatory recording requirement, the Partnership authorities will put in place additional monitoring of DHP awards to gain understanding about the reasons for financial hardship, follow-up with customers to understand the outcomes that result from DHP and whether the situation has been resolved. This data will be used improve the DHP awards process in subsequent years and to assess value for money.

Housing Benefit and Council Tax Support: Verification Policy

Introduction

1. The Council is committed to reducing fraud and error within the Housing Benefit and Council Tax Support system. Efficient and effective verification of all details supplied by claimants will minimise the risk of fraud and error entering the system.
2. Verifying information supplied by claimants enables the Council to determine entitlement to benefit and/or Council Tax Support.
3. The Housing Benefit Regulations 2006 86(1), HB (Persons who have attained the qualifying age for state pension credit) Regulations 2006 67(1), The Council Tax Regulations 2006 72(1), The CTB (Persons who have attained the qualifying age for state pension credit) Regulations 2006 57(1) and the Council Tax Reduction Scheme Regulations 2013 requires that:

‘...a person that makes a claim shall furnish such certificates, documents, information and evidence in connection with a claim...as may be reasonably required by the appropriate authority to determine that person’s entitlement to housing benefit.’
4. The Department for Work and Pension’s (DWP) Security Manual June 2006 provides Local Authorities with guidance on the minimum standards for collection of evidence. The Council will be fully compliant with all core guidance contained in this manual.

Policy Aims

5. Verification ensures that:
 - Claims for Housing Benefit and Council Tax Support are fully supported and documented by all necessary evidence required to determine a claimant’s entitlement.
 - All documentary evidence used to process claims is in accordance with the standards set by the Department for Work and Pension's Security manual.
 - The risk of fraud and error entering the benefit system is minimised.
 - Where fraud and error exists it is corrected.
 - Discrepancies identified through the verification of claims are resolved and the reasons for the discrepancy are fully documented.
 - There is an efficient and effective in-claim review programme.

Policy

6. All evidence submitted in support of the application and maintenance of Housing and Council Tax Support claims will be verified in accordance with the Department for Work and Pension's Security Manual guidance before the claimants details are entered onto the Council's computerised application software.
7. As part of the assessment process checks for both quality and accuracy will be undertaken in accordance with the Department for Work and Pensions requirements.
8. Identify errors and put things right through changing working practices, procedures and staff training.
9. Schedule a programme of in-year claim reviews to identify possible un-reported changes in circumstances.
10. Fully document the details of reviews.
11. Treat information received in absolute confidence. Information is protected by law (including data held on computers by the Data Protection Act).
12. Provide training to staff to ensure those claimants who have personal and sensitive issues are treated in a tactful and sympathetic way.
13. Respect the right to privacy and provide private interview facilities on request.
14. Provide the means for claimants to access services in person, in writing or by telephone.
15. Treat all customers in a fair and equitable manner having particular regard to the Human Rights Act, Equalities Act 2010 and any other legislation or Policies that may have an impact.

Housing and Council Tax Support Verification: good practice guidance followed by the Council

Verification good practice followed by the Council covers the following:

- ensuring a person making a claim or notifying a change of circumstance provides all the certificates, documents information and other evidence in its original form to support the claim as a local authority (LA) may reasonably require
- ensuring all employees responsible for receiving and verifying documents are trained on the latest evidence requirements including identifying false documents and following up discrepancies, and apply these in order to comply with the relevant legislation
- using ultraviolet scanners to verify the validity of documents

- ensuring photocopies of original documents are stamped and certified as such
- informing any staff who are responsible for the receipt of claims of any risks likely to affect verification of claims, such as known identity frauds
- recording the reasons why evidence below the standards specified in the DWP HB/CTB Guidance Manual has been accepted in exceptional circumstances
- providing an aide-memoire for benefit assessors to complete and maintain a checklist that confirms the officer who verified the claim and details of:
 - identity
 - residency and liability to pay
 - receipt of Income Support/Income-based Job Seekers Allowance IS/JSA(IB) or Pension Credit
 - income and savings
 - any other relevant information
- maintaining a clear audit trail when using the Secretary of State's assurance that Section 1(1A) and 1(1B) of the Social Security Administration Act (SSAA) 1992 has been satisfied for Pension Credit applications or claims made to Jobcentre Plus. It should include, as appropriate, at least one of the following notifications:
 - the Local Authority Input Document (LAID) from Jobcentre Plus
 - Assessed Income Figure (AIF) from the Pension, Disability and Carers Service (PDCS)
 - Electronic Transfer of Data (ETD) notification of a Pension Credit award
 - clerical notification relating to Pension Credit from PDCS
- maintaining regular liaison with the Local Authority Support Team (LAST) to ensure that the Customer Information System (CIS) is being used effectively and securely
- monitoring CIS usage to maximise effective use and improve efficiency.
- checking with Jobcentre Plus and PDCS that they are aware of any non-dependants when the customer is in receipt of IS/JSA(IB)
- arranging for revenues and benefits staff to spend a day shadowing the LA's counter-fraud investigation team.

Further guidance

This guidance is in accordance with the DWP Security Guidance Manual June 2006 and DWP HB/CTB Guidance Manual July 2009.

Operating a tick box approach to claims processing is a recipe for overlooking important information.

Staff who are responsible for accepting and checking claims in the first instance have a vital role to play in the success or failure of benefit processing (both speed and accuracy) and the security of the system.

Staff are the guardians of the gateway to the benefits system and need to be vigilant. Staff have responsibility to ensure all information that is provided is genuine and can recognise manipulated, forged or counterfeit documents.

When a claim is received everything must be considered. What are the facts they are telling you and is the claim believable?

Is the claim form complete? Omissions may be a deliberate attempt to conceal information and may be used by defence solicitors in the event of a court case or may prevent a sanction being applied.

Has a third party annotated the claim form? Comparison of handwriting is not time consuming or difficult. A data imaging system is unlikely to show any changes in the colour of ink used, so it is important that such checks are completed before originals are returned.

It is important that original documents are seen and that they are examined to ensure that they are genuine. Ultra violet scanners can be used to check security features on documents and watermarks should be examined by viewing the document against natural light. Again this needs to be undertaken before original documents are returned to the customer.

A robust audit trail must be maintained. It can be difficult for anyone checking the claim at a later date to identify which documents have been used to verify certain aspects of the claim. For example if evidence of a passport, driving licence or birth certificate are not held on file it is difficult to establish what has been used to verify someone's identity.

If a customer is being seen in person and providing something with their photograph on as evidence a check should be made to satisfy the Officer that the picture on the photograph is the person they are seeing. If they are satisfied a note should be made on the Academy system for future reference.

Signature comparisons should be undertaken with official documents bearing their signature or, if appropriate, previous claims. Again a note should be made to show this comparison has been made.

If discrepancies are identified in the claim staff will use their judgement to either:

- question the customer to see if they can explain the discrepancy
- refer the case to a Senior Officer
- refer the case to the Fraud Investigator.

Full compliance

It is also important to recognise that full compliance is not always possible. However, if this is the case staff must record the action taken and why.

Example 1. A customer has left their previous address due to domestic violence and was unable to take any documents with her. It would be unreasonable to ask the customer to return to the address to collect this information. The customer should be interviewed to build up a picture to ensure you have sufficient information to make a decision.

Example 2. A customer is only able to produce his latest bank statement. On questioning the customer he states that he destroys his statements shortly after receipt. He has also established that a replacement from the bank would cost £10. It would be unreasonable to expect a customer to pay this. In this case providing there are no concerns with the explanation ask the customer to provide his next 2 statements and assess benefit. A review note must be set to ensure these details are received.

Example 3. A customer is unable to provide a utility bill because she has recently moved into a new house. Providing the customers story appears to be reasonable put benefit into payment and set a review note for 3 months to request the first bill.

In all cases the Council will detail the decision with notes on the customer's record.

PLEASE NOTE THIS LIST IS NOT EXHAUSTIVE.

Is further evidence required?

Before requesting further evidence always consider if it is required.

For example a working age customer fails to provide any evidence of income but states he has £27,000 in a bank account. In this case the customer would not qualify for benefit and it would be unreasonable to request additional information.

Stolen or forged official documents

If the Council establishes that an official document is forged or stolen it should be brought to the attention of the Fraud Investigator immediately.

Scrutinise the claim form carefully.

Careful scrutiny of claim forms can provide useful information.

If a current or previous job involved driving it would not be unreasonable to request sight of the drivers licence for evidence of ID.

What was the claimant's status at the previous address; if they were an owner-occupier there may be equity available or expected. We would expect enquiries to be made and the results recorded.

In cases where a decision has been delayed, before determination enquiries should be considered to establish what monies the customer has been living on, particularly where another benefit is delayed; is there undeclared household income? Has the customer paid their rent? If so, from what source? Decision Makers should exercise their judgement based on the individual circumstances of each case.

If wages have been declared how are they paid? If by Account Transfer / BACS or cheque, has the customer declared a bank/building society account and does the account show the appropriate credits? If not this could indicate a second bank account.

In standard cases is the level of wages or declared savings in line with rent paid in advance or bond payments?

Verification

Most people will be able to provide a reasonable level of documentation in support of their claim; however, **it is important to decide what is reasonable in the light of all the circumstances.**

Identity

An identity check is essential for every claim. Before assessing a claim the Council must be satisfied of the claimant's identity. This is satisfied by the

claimant providing their National Insurance Number (NINO). The DWP Housing Benefit Guidance Manual states that Local Authorities can accept that the DWP or HMRC have verified the applicants identity via the customer's NINO where this can be confirmed on the CIS system. The Council will access CIS and save a screen print and place with the claim file. Where this is not possible or doubts arise, further checks must be undertaken and two proofs of identity are required.

Primary evidence:

Where possible it is always best to see primary evidence of the customer's and partner's identity.

UK passport

The passport must be current. Latest UK passports show European Union at the top of the front cover. This shows the holder is a UK National for EU purposes. (A British subject with the right of abode in the UK or a British Dependent Territories citizen by virtue of a connection with Gibraltar)

Other British passports will be in similar format but without the EU reference.

Birth certificate

Check date of issue. Before June 1969 the certificate will be in landscape format and refer to boy/girl. After this date it will be in portrait format and refer to male/female.

Driving licence

Old style driving licences issued prior to October 1999 did not require the applicant to prove identity.

New style driving licences issued after October 1999 require the applicant to produce evidence of ID. These are in 2 parts, the photo card and paper counter-part.

This shows that the most useful and reliable proof of ID is either a passport or a photo card driving licence.

Unable to provide primary evidence of identity

If the customer is unable to provide primary evidence of identity the Council will document why and detail what evidence has been used to verify the identity of

the applicant and why. A number of useful sources can be used to verify identity but must be considered in relation to the wider claim evidence. Evidence that can be used includes:

Benefit or Tax Credit award letter, for example Income Support or Child Tax Credit
Marriage Certificate/divorce or annulment papers
Medical Card
UK Residence Permit
European Union Identity Card
Letter from a Solicitor, Social Worker or Probation Officer
Bank statement (dated within 4 weeks prior to the date of claim)
Utility bill (paid, and for the quarter prior to the date of claim)
Wage slips from the current employer

Using the same documents for future claims

It is possible to use evidence of identity provided on a previous claim to support a current claim. For example a customer provided a passport to verify identity on his last claim. Provided that the passport is still current and signatures match this can be used to verify the new claim. However, to provide a full audit trail the action taken must be documented.

Fresh evidence must be provided if the passport has expired or if more than 2 years have elapsed since the date of the last claim.

Proof of rent

A rent book can be easily purchased and staff should look out for rent books that have been completed at same time in the same ink.

The Council will need to judge if the rent book appears genuine. For example it would not be reasonable to request a tenancy agreement if the customer submits a three-year-old rent book that had seen considerable wear, completed in different coloured inks and in different style to the customer's handwriting. Consider each case on its merits before requesting additional proof of rent.

Tenancy agreements should contain details of the rent amount payable, payment period and what is included, start date and duration of tenancy, name of landlord / agent and customer and be signed by either the customer or the landlord. Tenancy agreements and other correspondence from landlords should be checked for authenticity and handwriting cross-checked against documents held.

If a tenancy agreement to verify a previous claim is still current and on file it can be used to verify a new claim providing the reasons are fully documented.

Proof of National Insurance Number

The Council must obtain proof of customers and, where appropriate a partners National Insurance Number (NINo). A number of documents can be used to verify this including:

- DWP and HMRC records on CIS
- National Insurance Number card
- P45/ P60
- Wage slip
- Tax Credit award letter/ HM Revenue and Customs letter
- Letter from the Department of Work and Pensions
- Bank statement of a self employed person paying class 2 NI contributions by direct debit
- Benefit payment book

Again it is possible to use verification of a NINO seen on a previous claim subject to there being less than 2 years since date of the last claim. Again action taken must be recorded.

Verification of residency

Visit

The best way to verify residency is to visit the customer.

Utility bill

In privately rented cases not visited a recently paid fuel bill should be used to verify that the property has been occupied.

If the customer has only recently become the tenant a bill will not be available, or in some areas tokens are in use, which will prevent this. If the customer is a new tenant set a review note for 3 months to request a paid fuel bill.

Other

Although other correspondence from official sources is acceptable, local knowledge is also important. If the landlord is known, and if the customer has given consent, can they confirm the customer is resident? You will need to document how residency has been verified.

It is important to remember that receipt of IS/JSA(IB)ESA or other benefits is not dependant on residency and a bank account does not always mean the claimant is living at that address. The Council will need to take into account a number of factors when considering this.

Income and savings - Standard claims only

The Council does not need to verify income or savings if the customer is in receipt of IS, JSA (IB), ESA or Pension Credit, Guarantee Credit, as the Department of Works and Pensions (DWP) will have completed this. For example proof of Child Benefit is not required if a customer were in receipt of Income Support.

You may exceptionally request additional information if you have evidence to suggest the customer has not reported a material fact to the DWP.

Capital below £5,500

The Council has decided not to verify capital when the customer has declared all their savings and they total less than £5,500. This is in accordance with DWP Bulletin G22/2008. Where doubt exists the Council will require evidence of savings as detailed below.

Capital exceeding £5,500

Bank/Building Society/Post Office accounts.

The Council will need to see **2** months current and consecutive bank statements for each account held by the customer and/or their partner

Bank/building society statements may contain credits from a number of sources including:

- employers in respect of wage
- occupational pensions
- maintenance payments from former partners
- Benefit payments.

It is particularly important to resolve any unexplained credits or debits on statements. This should form part of the audit trail justifying making or refusing payment.

Bank statements should contain the customer's name and address and statement sheets should be numbered. If any pages are missing these should be obtained as the customer may be trying to hide important information. A check should also be made to ensure that the account number is the same as that recorded previously on the claim form.

Wage/salary packets/slips

The Council requires 5 weekly, 3 four-weekly/fortnightly or 2 monthly consecutive pay slips.

What information do they/should they contain?

- Name of employee/employer
- National Insurance number and contributions paid
- Income Tax – weekly/to date and tax code – week number
- Gross pay to date, useful to calculate an average to see if wage provided is high or low
- Method of payment, BACS/Account Transfer/cheque. All indicate existence of a bank account
- Payroll number
- Hours worked, are they consistent with the level of pay?
- Deductions e.g. savings/club deductions may be being made and should be added back to establish the true net figure.

Pay advices come in various shapes and size but should contain most if not all of the above.

Although wage packets are acceptable as verification always consider the size of the employer. It would be unusual for a large employer to use this method. Hand written payslips must be compared to the customer's own handwriting.

In exceptional circumstances ask the customer to get a certificate of earnings form completed by the employer. To avoid the risk of fraud entering the system request that the employer returns this form directly to the council.

It is important that inconsistencies are challenged and the outcomes recorded.

Other capital

Where the customer or their partner has other capital the Council will need to see:

- any National Savings certificates held
- any premium bonds held
- certificates showing the amount of any stocks or shares held
- certificates showing the amount of any unit trusts held
- statements showing the value of investments held in ISA's or TESSA's

Receipt of other income

The Council will need to see verification of any other income received. For example income from:

- other benefits or tax credits
 - a private or occupational pension
 - payments received in respect of board and lodgings
 - a student grant
 - a charity
 - maintenance from a former partner.
-
- This list is not exhaustive

It is often possible to verify the receipt of other benefits or tax credits from bank statements. However, all factors must be considered, for example does the amount of Child Benefit in payment match the number of children declared.

If the customer has children, have they declared Child Tax Credit? If not this must be checked as Child Tax Credit is payable to a person/couple with children if their income is less than £58,000.

Again it is possible to use evidence of income provided on a previous claim to support a current claim. For example if a customer was declaring Child Benefit for the same number of children as the previous claim it would be unreasonable to request proof again. However, to provide a full audit trail document the action taken.

Non-dependants

Unless the customer is excluded from having any non-dependant deductions made the Council will need to verify the income of a non-dependant to the same standard as the customer and their partner.

If a non-dependant refuses to provide this information the Council will need to assume the relevant level of non-dependant deduction based on information held about their circumstances.

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 8 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 (i.e. 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 (i.e. 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 8 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.
- DWP.
- Reputable financial institutions.
- Courts.
- GP.
- Support or advisory services (i.e. Citizens Advice Bureaux (CAB)).
- Other council services (i.e. Strategic Housing / Housing Options).

(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 (i.e. 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 (i.e. to alcohol or drugs).
- Has a severe debt problem (i.e. 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 8 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 etc.) 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 8 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 (i.e. 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 (i.e. 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 8 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 (i.e. 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 etc. because of any inability 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 GP, 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 (i.e. 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 1st 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 1st 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 1st 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 1st 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, GPs, probation officers, 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, GPs, probation services and the homeless section of the local authority will be accepted without question.

Jobcentre Plus, Pension Service or Bond Guarantee Scheme staff etc.

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.

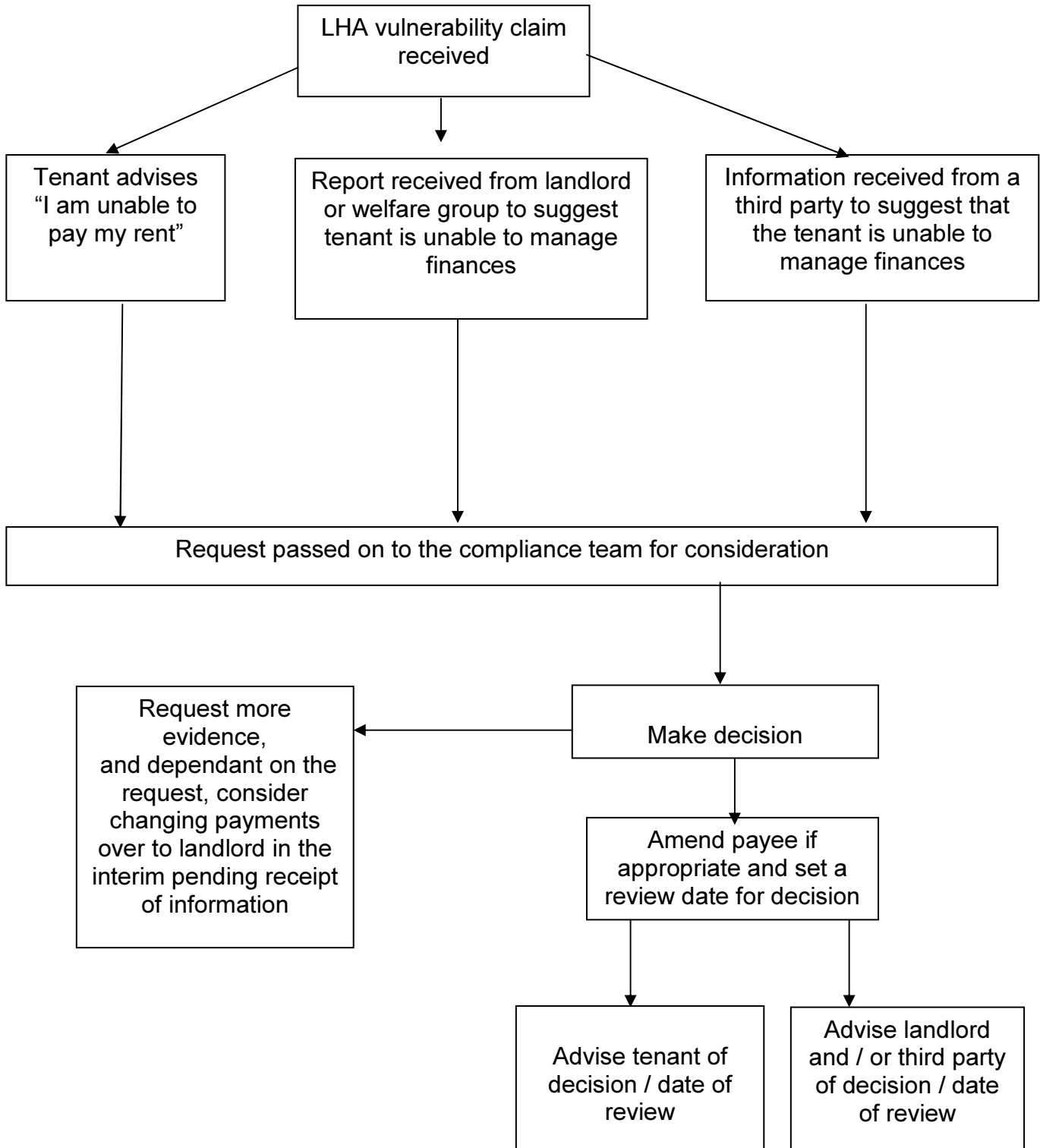
Notification of Decision

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.

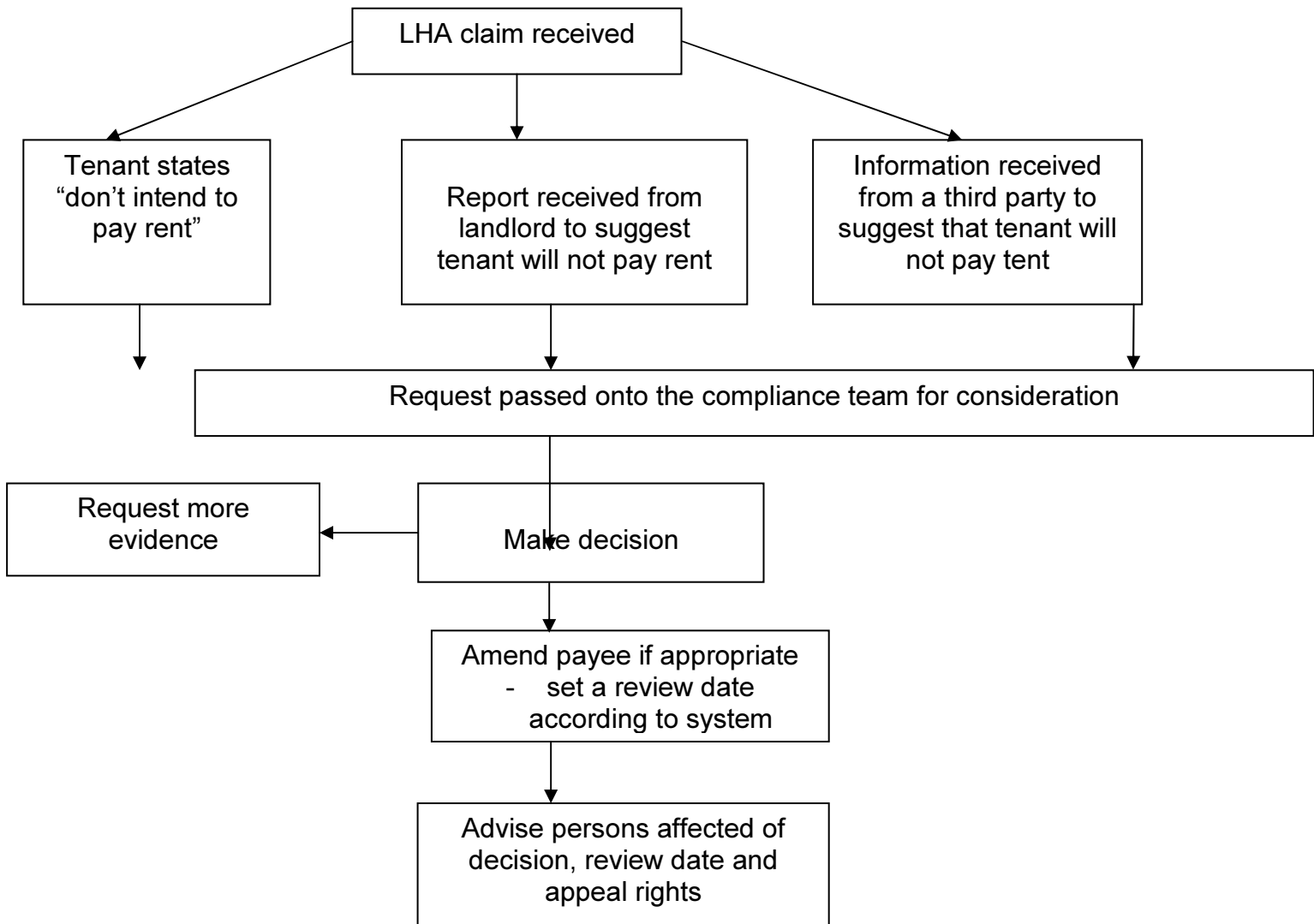
Evidence of Vulnerability and Possible Sources

| 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 GP • 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 GP • 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 5 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.

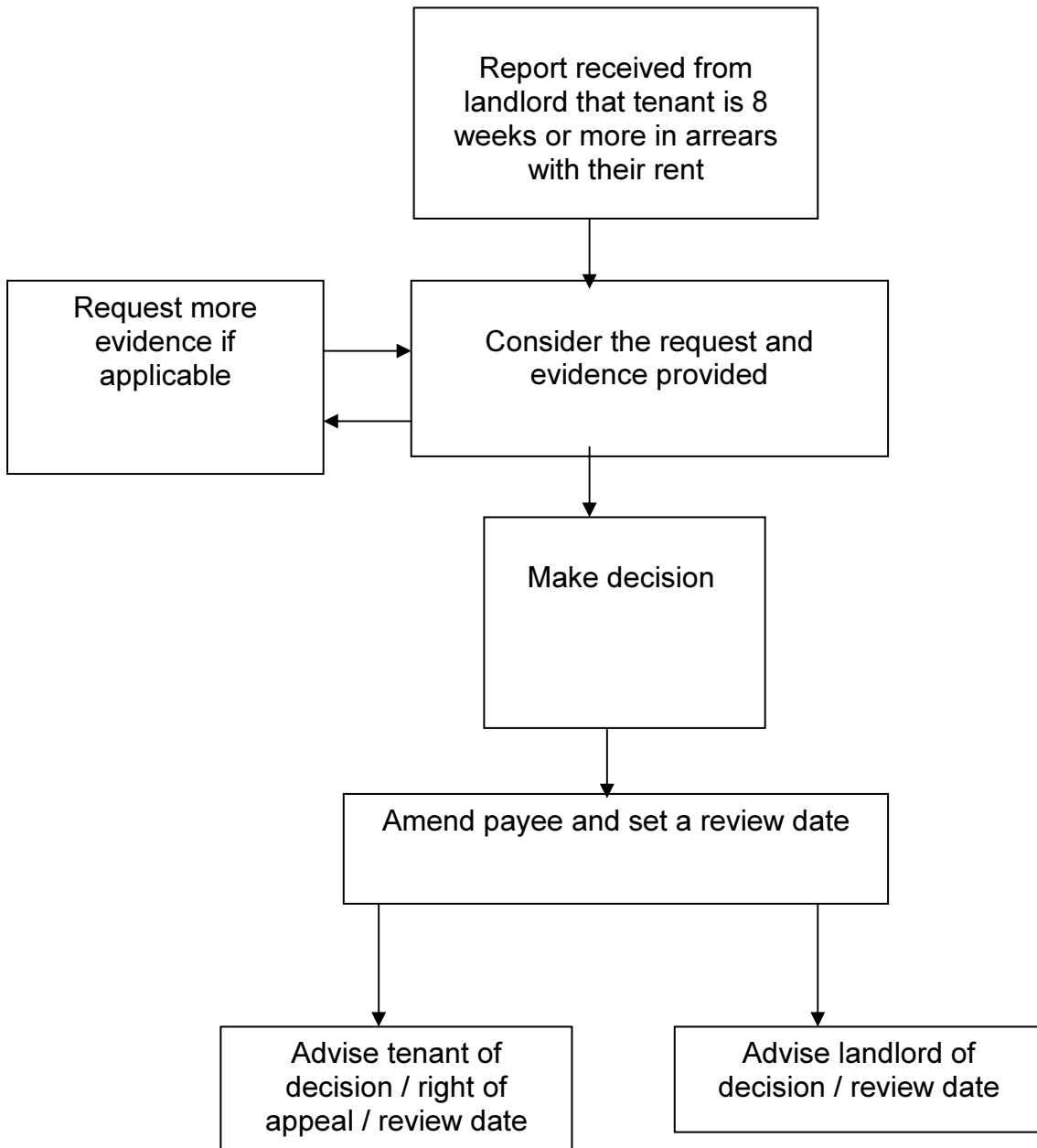
Fax and e-mail are recommended means of contact for landlords when making initial contact. The local authority will suspend payment immediately and make a decision within five working days.

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



This page is intentionally left blank

NON DOMESTIC RATES HARDSHIP RELIEF POLICY

Introduction

This document sets out the provisions for the awarding of hardship by a local authority. It is a discretion that rests with the local authority; there is no statutory duty to award mandatory relief.

Each authority will have its own procedures for when to award hardship relief and for how long it is to be awarded. These need to be regularly reviewed and updated to take account of changes in legislation and policy changes within each authority.

It should be noted there are other reliefs available to a ratepayer. These can be summarised as follows:-

- Small Business Relief

A local authority is under a statutory duty to award small business relief (subject to certain conditions being satisfied) if a ratepayer occupies a hereditament that has a rateable value below a prescribed sum. As a consequence, the local authority has no discretion in the matter. However, if the ratepayer is entitled to mandatory relief, they would then not qualify for small business relief. Should small business relief be awarded, there is no cost to the local authority as the full sum is offset to the non-domestic rate pool.

There are separate procedure notes for staff when administering small business rate relief.

- Part-Occupied Relief

A local authority is entitled to award part-occupied relief when a hereditament is part-occupied for a 'short-time' only. There is no statutory definition of a 'short-time' and it is open to the local authority to interpret the period. Should relief be awarded, there is no cost to the local authority as the full amount is offset to the non-domestic rate pool.

There are separate procedure notes for staff when administering small business rate relief.

- Mandatory / Discretionary Relief

A local authority is entitled to award mandatory and / or discretionary relief; the four circumstances where relief can be awarded are:-

- Charities and Kindred Organisations.
- Community Amateur Sports Clubs.
- Rural Areas.

- Local Discounts.

There is a separate policy for the partnership that covers mandatory and discretionary relief.

General Provisions

The relevant provisions regarding the award of hardship relief are set out in **Section 49 Local Government Finance Act 1988**. This gives the local authority power to reduce or remit the amount a person is liable to pay (occupied and unoccupied properties) where it is satisfied that:-

- The ratepayer would sustain hardship if the authority did not do so; and
- It is reasonable for the authority to do so, having regard to the interests of persons subject to its council tax (Ctax).

Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding hardship relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance and state aid rules set out in **Appendices A & B** to the policy.

Period of Relief

The period in which relief is awarded (start and end date) is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year) and any future decision would be taken, as and when a request is received. Each case must be considered on its merits; the procedure adopted within the Leicestershire partnership.

Cost of Relief

From 1st April 2013, in accordance with the rules introduced by the Rates Retention Scheme, the cost of awarding rate reliefs has changed. The cost of awarding all forms of rate relief is now split between central government, billing authorities and major preceptors on a fixed percentage basis. Central government bears 50% of the cost, the county council 9%, the fire authority 1% and billing authorities the remaining 40%.

In regard to hardship relief, if the relevant conditions are satisfied, the local authority has the discretion to award or refuse the application. When making their decision the local authority must consider the guidelines and appendices in this document and take into account the impact such awards might have on council tax payers in the area, as 40% of the cost is borne by the general fund.

Decision Making Process

Although the effective date of any relief is not determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by the Section 151 Officer, or their deputy.

Appeals

Any appeal against a local authority's decision to refuse the award of hardship relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for hardship relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

APPENDIX A

GOVERNMENT GUIDANCE NOTE

Introduction

There is no statutory definition of hardship and each authority must consequently arrive at its own view in relation to each application. Guidance has been provided by the Office of the Deputy Prime Minister ('Guidance on rate reliefs for charities and other non-profit making organisations', issued in December 2002) as to the considerations that might be applied in the exercise of the discretion to grant hardship relief.

The ODPM's guidance goes on to say that "*hardship relief should be reviewed regularly and should be given for short fixed periods, which could be renewed following a review, rather than for extended periods without review, but can straddle financial years*", and ends by suggesting that billing authorities should consider establishing clear rules for notifying ratepayers as to their decisions as soon as is practicable. It further advises that applications for relief on the grounds of hardship need not be in writing and that relief can commence when the applicant meets the requirements.

Practitioners should take particular note of the advice relating to circumstances where hardship rate relief may count as 'state aid'. This is set out in **Appendix B** to the policy.

The power to reduce or remit rates on the grounds of hardship existed before 1st April 1990 in relation to the then discretion to charge rates in respect of unoccupied property. The principle is now significantly different, since remission can also be applied in respect of occupied property.

Advice

The guidance note recommends:-

- a) Although authorities may adopt rules for the consideration of hardship cases, they should not adopt a blanket policy either to give or not to give relief. Each case should be considered on its own merits and the application process kept as simple and streamlined as possible to enable decisions to be made quickly.
- b) Reduction or remission of rates on the grounds of hardship should be the exception rather than the rule.
- c) All relevant factors affecting the ability of a business / ratepayer to meet their liability for rates should be taken into account.
- d) 40% of the cost of any reduction or remittance of rates must be borne locally and met by the authority.
- e) The 'interests' of council taxpayers in an area may go wider than direct financial interests (i.e. where the employment prospects in the area would be worsened by a company going out of business, or the amenities of an area might be reduced by, for instance, the only provider of a service in the area.
- f) Where the granting of relief would have an adverse effect on the financial interests of

council tax payers, the case for a reduction or remission of rates payable may still on balance outweigh the cost to taxpayers.

- g) Hardship rate relief may in some cases constitute state aid, and may need to be notified to the European Commission.
- h) The hardship caused to a ratepayer may be self-evident (i.e. where a business has been affected by severe loss of trade, due to external factors such as natural disasters). However, authorities may wish to consider how the business can demonstrate such loss of trade or business (i.e. do accounts, order books, till receipts or VAT returns show a marked decline in trade compared to corresponding periods in previous years?)
- i) Authorities should be clear in awarding relief that it will be granted only for the period for which there is clear evidence of hardship for the ratepayer concerned.
- j) To guard against fraudulent claims, authorities should satisfy themselves that the claim is from a ratepayer suffering genuine hardship.
- k) Applications for relief on the grounds of hardship need not be in writing and relief can commence when the applicant meets the requirements. It is also possible for an application for relief to be in respect of future years.

APPENDIX B

STATE AID

The issue of some rating reliefs being considered as qualifying as 'state aid' is now of some significance and is briefly explained in the guidance note issued by the Office of the Deputy Prime Minister in December 2002. This document, which is prefaced by the comment that it "*should not be taken as exhaustive guide to the complex rules and case of EU state aid*", is reproduced below, for information.

European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. Billing authorities should bear this in mind when granting discretionary rate reliefs.

Empty property and transitional reliefs are regarded as part of the determination of liability, applied equally to all ratepayers, and so are not considered to be state aid.

Rate relief for charities and non-profit making bodies is not normally considered to be state aid because the recipients are usually not in market competition with other businesses. However, if the charities or non-profit making bodies are engaged in commercial activities or if they are displacing an economic operator or if they have a commercial partner, rate relief could constitute state aid, and the rules set out below will apply.

Hardship relief can also constitute state aid, as can relief under the village shop and farm diversification schemes. In practice, however, aid to village shops, most local 'commercial' charities and other small-scale local service organisations (e.g. B&Bs, small retailers, child-care facilities etc.) will not be caught by the state aid rules as long as they are independent family-owned businesses, because they are deemed incapable of affecting intra-Community trade. Any manufacturing operation, on the other hand, however small-scale, is normally deemed to be capable of affecting intra-Community trade, so rate relief for butchers and farmers for example, producing cheese, sausages, cider and other foodstuffs, would be state aid.

There are also general exceptions from the state aid rules where the aid is below a 'de minimis' level. This is 200,000 euros, or 100,000 euros for the road transport sector, to any one business over three years (**Article 2 EC 1998/2006**). The de minimis level applies to all de minimis aid received, including other Government subsidies or grants, in addition to any rate relief. There are also specific exemptions to the de minimis threshold and regard should be had to the current EC regulation.

The guidance note goes on to say that where relief does constitute state aid, it may need legal clearance from the European Commission. Authorities that are considering granting any hardship relief, charity relief or farm diversification relief which would be caught by the state aid rules and would bring total aid to the business concerned above the de minimis level, or granting any amount to businesses in the excluded sectors are advised to contact the Office of the Deputy Prime Minister, which will, if necessary, seek clearance from the European Commission. If Commission clearance is needed, it goes on, the relief should not be paid until clearance has been granted.

The guidance note, further, offers advice to authorities on questions relating to state aid, this being available from the State Aid Branch of the Department of Trade and Industry.

It has also been found that a valuation methodology that favours one ratepayer against another in a similar class can be held to be State Aid.

Appendix C

Hardship Criteria

General Principles

The principle purpose of awards of hardship relief shall be to provide short-term assistance to businesses that are suffering unexpected hardship, arising from circumstances beyond the business's control and outside of the normal risks associated with running a business of that type, to the extent that the viability of the business would be threatened if an award were not made.

1. Rate relief on the grounds of hardship shall only be awarded where it is considered that:

(i) The ratepayer would sustain hardship if the Council failed to grant Hardship Relief; and

(ii) It is reasonable to grant Hardship Relief having regard to the interest of person's subject to the Council Tax.

2 The test of "hardship" need not be confined strictly to financial hardship and applicants should disclose all relevant factors affecting the ability of the business to meet its rate liability.

3. The "interest" of local council tax payers may go wider than direct financial interests; for example, where employment prospects in an area would be worsened by a ratepayer going out of business, or the amenities of an area might be reduced by, for instance, the loss of a neighbourhood shop.

4. A business will not be considered to be suffering financial hardship in any annual accounting period during which it is profitable or has experienced a loss which is minor in comparison to the overall turnover of the business. In determining whether a business is profitable account shall be taken of reasonable drawings by the proprietor or reasonable remuneration of directors.

5. Where the circumstances giving rise to the hardship pertain for a only part of the business's normal annual accounting period the income and expenditure of the business for the period during which the circumstance pertain may be used to determine whether the business is profitable.

6. It is expected that businesses will take prompt action to mitigate any factors giving rise to hardship. Examples of mitigating actions may include seeking business advice, discounts and promotions, reviewing pricing, extending the range of stock or services, negotiating with creditors etc. Applications may be declined in circumstances where the business is unable to demonstrate that it is taking reasonable steps to alleviate the hardship.

7. Applicants must supply the last two years' accounts, a current cash flow forecast and a comprehensive business plan in order for an application to be considered. Where the business has traded for less than two years accounts must be provided where available, and draft accounts or budget forecasts must be provided for the period since the business commenced trading.

8. No award shall be made where it appears to the Council that the proprietor of the business has failed to exercise due diligence to anticipate circumstances that may give rise to hardship, financial or otherwise, and/or to put in place measures to prevent or mitigate the circumstances.

9. Applications will be viewed favourably where the criteria of the Policy are met and the business provides the only goods or services of that type in the local area or where the business is a niche business supplying specialist goods or services that are not widely available and vice versa.

New Businesses

10. Award of hardship rate relief will not be made for the purposes of enabling a new business to become established except where the viability of the business is threatened by events that could not reasonable have been foreseen when establishing the business.

Unoccupied Properties

11. Rate relief on the grounds of hardship in respect of rates payable for an unoccupied property will only be awarded in the most exceptional circumstances where there are clear and tangible benefits to local council taxpayers in making the award.

Relationship to other forms of Rate Relief

12. Applications for hardship rate relief shall be regarded as a last resort and will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible.

Duration of Awards

13. All awards shall terminate at the end of the financial year if the award has not ended at an earlier date. Where the hardship continues a further application may be made in the new financial year, however in considering repeated applications consideration should be given to the number and value of previous awards. Where an application is repeated for a subsequent period the Council may require the applicant to provide evidence (preferably from an accountant or other professional adviser) regarding the long-term financial viability of the business.

**NON-DOMESTIC RATE DISCRETIONARY RELIEF GUIDELINES
(HINCKLEY & BOSWORTH BOROUGH COUNCIL)**

Introduction

This document sets out the provisions for the awarding of mandatory and discretionary rate relief by a local authority. Whilst the local authority is under a statutory duty to award mandatory relief, the award of discretionary rate relief is at the discretion of the local authority.

Each authority will have its own procedures for when to award discretionary relief and for how long it is to be awarded. These need to be regularly reviewed and updated to take account of new legislation and policy changes within each authority.

This document focuses on both mandatory and discretionary relief and looks at the circumstances when relief can be awarded under the following four headings:-

- Charities and Kindred Organisations.
- Community Amateur Sport Clubs.
- Rural Areas.
- Local Discounts (discretionary relief only).

It should be noted there are other reliefs available to a ratepayer. These can be summarised as follows:-

- Small Business Relief

A local authority is under a statutory duty to award small business relief (subject to certain conditions being satisfied) if a ratepayer occupies a hereditament that has a rateable value below a prescribed sum. As a consequence, the local authority has no discretion in the matter. However, if the ratepayer is entitled to mandatory relief, they would then not qualify for small business relief.

There are separate procedure notes for staff when administering small business rate relief.

- Part-Occupied Relief

A local authority is entitled to award part-occupied relief when a hereditament is part-occupied for a 'short-time' only. There is no definition of a 'short-time' and it is open to the local authority to interpret the period.

There are separate procedure notes for staff when administering part-occupied relief.

- Hardship Relief

A local authority is entitled to reduce or remit the non-domestic rate (NDR) on the grounds of hardship if it is satisfied:-

- The ratepayer would sustain hardship if the authority did not do so; and
- It is reasonable for the authority to do so, having regard to the interests of persons subject to its council tax (Ctax).

There is a separate set of guidelines for the partnership that covers hardship relief.

Mandatory Relief

General

The relevant provisions regarding the award of mandatory relief are set out in **Sections 43 to 46 Local Government Finance Act 1988**.

Charities & Kindred Organisations

General Provisions

Where, on the day concerned, the ratepayer is a charity or trustees for a charity and the hereditament is wholly or mainly used for charitable purposes (whether of that charity or of that and other charities), the amount of relief to be awarded is 80%. Therefore, the ratepayer would be required to pay 20%. However, the charity or kindred organisation would be entitled to apply to the local authority for discretionary relief.

If the hereditament is unoccupied and the ratepayer is a charity or trustees for a charity, it will be exempt from having to pay any rate if it appears that when next in use, the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities).

A charity is described as being '*an institution or other organisation established for charitable purposes only, or any persons administering a trust established for charitable purposes only*'. The question as to whether an organisation is a charity may be resolved in the majority of cases by reference to the register of charities maintained by the Charity Commissioners. Entry in the register is conclusive evidence that an organisation is a charity, and is proof for all purposes except challenge of that registration.

The absence of an entry in the register does not necessarily mean that the organisation concerned is not a charity, since it may be excluded from the requirement to register. These 'excepted charities' include:-

- The Church Commissioners and any institution administered by them.
- Any registered society.
- Units of the Boy Scouts Association or the Girl Guides Association (except for funds producing more than £15 per year).

- Voluntary schools having no permanent endowment other than the school premises.

Where there is no registration of an organisation, or it is not excepted from registration, the determination of charitable status may present some difficulty. The principles of charitable status have been set out in case law where it has been established a charity, in its legal sense, comprises four principal divisions:-

- Trusts for the relief of poverty.
- Trusts for the advancement of religion.
- Trusts for the advancement of education.
- Trusts for other purposes beneficial to the community, but not falling under any of the preceding heads.

The provisions are extended for charity shops. The hereditament is to be treated as being wholly or mainly used for charitable purposes at any time if, at the time, it is wholly or mainly used for the sale of goods donated to a charity and the proceeds of the sale of the goods (after any deduction of expenses) are applied for the purposes of the charity.

Period of Relief

If relief is awarded by the local authority, the effective date will be backdated to when the charity or kindred organisation first met the prescribed criteria. The relief will continue until a charity no longer fulfils the prescribed criteria although it is prudent for a local authority to review relief at regular intervals.

Decision Making Process

All decisions on the award of mandatory relief to a charity or kindred organisation will be taken by officers. There is no involvement from members in the decision making process.

Appeals

Any appeal against a local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

Community Amateur Sports Clubs

General Provisions

A registered community amateur sports club (CASC) is entitled to mandatory relief at the same level as charities and kindred organisations. This includes being able to apply for discretionary relief. A CASC is defined in the **Finance Act 1988** and registration forms are available from the Inland Revenue website. A CASC is deemed to be registered from a time beginning with its effective registration (even if retrospective), and ending on the effective date of termination of a registration.

The relief will operate alongside discretionary relief which is available to a CASC that has not been registered with the Inland Revenue as a CASC. As with a charity or kindred

organisation, where the hereditament is unoccupied and the ratepayer is a CASC, it will be exempt from having to pay any rate if it appears that when next in use, the hereditament will be wholly or mainly used as a CASC.

Period of Relief

If relief is awarded by the local authority, the effective date will be backdated to when the CASC first met the prescribed criteria. The relief will continue until a CASC no longer fulfils the prescribed criteria although it is prudent for a local authority to review relief at regular intervals.

Decision Making Process

All decisions on the award of mandatory relief to a CASC will be taken by officers. There is no involvement from members in the decision making process.

Appeals

Any appeal against a local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

Rural Areas

General Provisions

A scheme to help certain kinds of hereditaments situated in rural settlements was introduced on the 1st April 1998. A local authority is required to compile and maintain a 'rural settlement list', which is to identify any settlements which:-

- Are wholly or partly within the authority's area.
- Appear to have a population of not more than 3,000 on 31st December immediately before the chargeable financial year in question.
- Are, in that financial year, wholly or partly within an area designated for the purpose (Note: with effect from 31st December 2001, the designated areas in England are all of those outside the specified urban areas).

An authority is not required to compile a rural settlement list in respect of any chargeable financial year if there is no such settlement complying with the above conditions in the area for that year.

Mandatory rate relief applies to a qualifying hereditament which is within a settlement identified in an authority's rural settlement list for the chargeable financial year where its rateable value is not, at the beginning of the year in question, more than a relevant prescribed amount. The current rateable value limits (1st April 2010 to 31st March 2015) are as follows:-

- £8,500: Qualifying general stores and post offices.
- £8,500: Qualifying food shops.
- £12,500: Qualifying public houses and petrol filling stations.

The key definitions for the above types of hereditament to qualify for relief are as follows:-

- Qualifying General Store

A hereditament, or part of a hereditament, is used as a 'qualifying general store' on any day in a chargeable financial year if:-

- A trade or business consisting wholly or mainly of the sale by retail of both food for human consumption (excluding confectionary) and general household goods is carried on there; and
- Such a trade or business is not carried on in any other hereditament, or part of a hereditament, in the settlement concerned.

- Qualifying Post Office

A hereditament, or part of a hereditament, is used as a 'qualifying post office' on any chargeable day in a financial year if:-

- It is used for the purposes of the post office; and
- No other hereditament, or part of a hereditament, in the settlement concerned is so used.

- Qualifying Food Shop

A hereditament, or part of a hereditament, is used as a 'qualifying food shop' on any chargeable day in a financial year if a trade or business consisting wholly or mainly of the sale by retail of food for human consumption (excluding confectionary and excluding the supply of food in the course of catering) is carried on there.

- Qualifying Public House

A hereditament, or part of a hereditament, is used as a 'qualifying public house' if on any chargeable day in a financial year:-

- It is used as a public house which is defined as being premises for which a justices on-licence is in force; and
- No other hereditament, or part of a hereditament, in the settlement concerned is so used.

- Qualifying Petrol Filling Station

A hereditament, or part of a hereditament, is used as a 'qualifying petrol filling station' if on any chargeable day in a financial year:-

- It is used as a petrol filling station which is defined as being premises from where petrol or other automotive fuels are sold retail to the general public for fuelling motor vehicles intended or adapted for use on roads; and
- No other hereditament or part of a hereditament, in the settlement concerned

is so used.

Where, on the day concerned, the ratepayer would satisfy any of the above conditions, the amount of relief to be awarded is 50%. Therefore, the ratepayer would be required to pay 50%. However, the ratepayer would be entitled to apply to the local authority for discretionary relief. As the relief is only awarded if a hereditament is occupied, no relief is applicable if the hereditament is unoccupied.

Period of Relief

If relief is awarded by the local authority, the effective date will be backdated to when the ratepayer first met the prescribed criteria. The relief will continue until a ratepayer no longer fulfils the prescribed criteria although it is prudent for a local authority to review relief at regular intervals.

Decision Making Process

All decisions on the award of mandatory relief to a ratepayer will be taken by officers. There is no involvement from members in the decision making process.

Appeals

Any appeal against a local authority's decision not to award mandatory relief can represent a challenge to its application for a liability order in the magistrate's court.

Discretionary Relief

General

The relevant provisions regarding the award of discretionary relief are set out in **Sections 47 and 48 Local Government Finance Act 1988** and the **Non-Domestic Rate (Discretionary Rate Relief) Regulations 1989 (S.I. 1989/1059)**.

Charities & Kindred Organisations

General Provisions

The conditions to be satisfied before a local authority can consider an application with regard to an occupied hereditament are that:-

- The ratepayer is a charity or trustees for a charity and the hereditament is wholly or mainly used for charitable purposes; or
- The hereditament is not an excepted hereditament, and all or part of it is occupied for the purposes of one or more institutions or other organisations none of which is established or conducted for profit and each of whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts; or
- The hereditament is not an excepted hereditament, it is wholly or mainly used for purposes of recreation, and all or part of it is occupied for the purpose of a club, society or other organisation not established or conducted for profit.

(Note: an 'excepted hereditament' (in respect of which discretionary relief cannot be given) is a hereditament, all or part of which is occupied (otherwise than as a trustee) by a billing authority or by a precepting authority other than charter trustees).

Where, on the day concerned, the ratepayer is awarded discretionary relief in respect of an occupied hereditament, the amount of relief can be any sum up to (and including) 100%. The local authority may therefore 'top up' any mandatory relief awarded (80%) whilst awarding relief up to (and including) 100% to any charity or kindred organisation not in receipt of mandatory relief.

If the hereditament is unoccupied and the ratepayer is a charity or trustees for a charity, it will be exempt from having to pay any rate if it appears that when next in use, the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities). If mandatory relief is not applicable, discretionary relief up to (and including) 100% can be awarded if it appears that when next in use, the hereditament will be wholly or mainly used for any of the purposes set out above.

Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C.** This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1st April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30th September. Should the determination be made before the 1st October, the effective date can be backdated to the 1st April in the previous year (subject to the relevant conditions being satisfied).

The period in which relief is awarded is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year in which the determination is made) and a new decision is taken in advance of the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

Decision Making Process

As the effective date of any relief is determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy.

Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

Community Amateur Sports Clubs

General Provisions

Discretionary relief can be awarded to a CASC that is already in receipt of mandatory relief. Where, on the day concerned, the CASC is awarded discretionary relief in respect of an occupied hereditament, the local authority may therefore 'top up' any mandatory relief awarded (80%). If the CASC is not registered (and thereby not in receipt of mandatory relief), up to (and including) 100% relief can be awarded.

If the hereditament is unoccupied and the ratepayer is a registered CASC, it will be exempt from having to pay any rate if it appears that when next in use, the hereditament will be wholly or mainly used for the purposes of a registered CASC. If mandatory relief is not applicable, discretionary relief up to 100% can be awarded if it appears that when next in use, the hereditament will be wholly or mainly used for the prescribed purposes.

Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1st April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30th September. Should the determination be made before the 1st October, the effective date can be backdated to the 1st April in the previous year (subject to the relevant conditions being satisfied).

The period in which relief is awarded is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year in which the determination is made) and a new decision is taken in advance of the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

Decision Making Process

As the effective date of any relief is determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy. An annual report will be taken to the cabinet/executive that sets out all relief awarded in a year (on a case-by-case basis). The report must also detail the relief to be awarded (again on a case-by-case basis) in the forthcoming year.

Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

Rural Areas

General Provisions

Discretionary relief may be awarded in such circumstances where the rateable value of the hereditament at the beginning of the chargeable financial year concerned does not exceed a prescribed rateable value. The amount prescribed for England is £16,500 for the period 1st April 2010 to 31st March 2015

In the circumstances described above (i.e. where a hereditament is not a qualifying general store or a qualifying post office as described in the conditions for mandatory relief), the billing authority may not award discretionary relief unless it is satisfied that:-

- The hereditament is used for purposes which are of benefit to the local community; and
- It would be reasonable for the billing authority to award relief, having regard to the interests of persons liable to pay its Ctax.

It follows from the above that where the hereditament is a qualifying general store or qualifying post office, and there is, consequently, an entitlement to mandatory relief, discretionary relief may be applied to the chargeable amount, without reference to the conditions referred to above.

Where, on the day concerned, the ratepayer is awarded discretionary relief in respect of an occupied hereditament, the amount of relief can be any sum up to (and including) 100%. The local authority may therefore 'top up' any mandatory relief awarded (50%) whilst awarding relief up to (and including) 100% to any ratepayer not in receipt of mandatory relief.

Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix C**. This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of

the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1st April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30th September. Should the determination be made before the 1st October, the effective date can be backdated to the 1st April in the previous year (subject to the relevant conditions being satisfied).

The period in which relief is awarded is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year in which the determination is made) and a new decision is taken in advance of the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

Decision Making Process

As the effective date of any relief is determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy. An annual report will be taken to the cabinet/executive that sets out all relief awarded in a year (on a case-by-case basis). The report must also detail the relief to be awarded (again on a case-by-case basis) in the forthcoming year.

Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

Local Discounts

General Provisions

From the 1st April 2012, a local authority can reduce the NDR by up to (and including) 100% for any local ratepayer; not just those that previously were entitled to apply for discretionary relief. This relief would be awarded in the form of a discount.

If a ratepayer would not have been entitled to discretionary relief under the rules that existed prior to the 1st April 2012, a local authority may only make the decision if it is satisfied that it would be reasonable for it to do so, having regard to the interests of persons liable to pay Ctax set by it.

It is important to stress that the extension of the provisions from the 1st April 2012 does not have an impact on ratepayers that meet the criteria that existed prior to the 1st April 2012. They would still be entitled to apply for discretionary relief under those criteria and should be considered accordingly.

Criteria for Awarding Relief

Members are advised to agree criteria for their authority which officers are expected to adhere to when awarding discretionary relief. **See Appendix D.** This should be regularly reviewed and updated. In agreeing criteria, members and officers will want to take note of the guidance note and state aid rules set out in **Appendices A & B** to the guidelines.

Period of Relief

If relief is awarded by the local authority, the effective date of any entitlement can be backdated to the beginning of the financial year (i.e. 1st April) in which the determination is made (subject to the relevant conditions being satisfied) if that determination was made after the 30th September. Should the determination be made before the 1st October, the effective date can be backdated to the 1st April in the previous year (subject to the relevant conditions being satisfied).

The period in which relief is awarded is at the discretion of the local authority. In practice, many authorities award relief for a fixed period (say up to the end of the financial year in which the determination is made) and a new decision is taken in advance of the billing run each March on whether to extend relief for a period of 12 months. This is the procedure to be adopted within the Leicestershire Partnership.

By awarding relief for a fixed period, the local authority is not faced with the legal restraints should it subsequently look to reduce or withdraw relief it is granted indefinitely. If relief is awarded indefinitely, any decision to reduce or withdraw relief would only become effective having first given 12 months notice and then it would continue through to the end of that financial year.

Decision Making Process

As the effective date of any relief is determined by when a local authority takes a decision to award relief, it is imperative there is no delay in the decision making process. Officers must take decisions on a 'case-by-case' basis in line with the criteria for each authority. Each application will be signed off by a Partnership Manager, except where the application falls outside of the criteria, whereupon, the application will be considered by the Section 151 Officer, or their deputy. An annual report will be taken to the cabinet/executive that sets out all relief awarded in a year (on a case-by-case basis). The report must also detail the relief to be awarded (again on a case-by-case basis) in the forthcoming year.

Appeals

Any appeal against a local authority's decision to refuse the award of discretionary relief would be by way of an application of judicial review to the high court. In the first instance, any appeal against a decision to refuse an application for discretionary relief should be considered by a panel of two senior officers within the relevant authority. There would be no further right of appeal to members.

Cost of Relief

From 1st April 2013, in accordance with the rules introduced by the Rates Retention Scheme, the cost of awarding rate reliefs has changed. The cost of awarding all forms of rate relief is now split between central government, billing authorities and major preceptors on a fixed percentage basis. Central government bears 50% of the cost, the county council 9%, the fire authority 1% and billing authorities the remaining 40%.

In regard to Discretionary Rate Relief, if the relevant conditions are satisfied, the local authority has the discretion to award or refuse the application. When making their decision the local authority must consider the guidelines and appendices in this document and take into account the impact such awards might have on council tax payers in the area, as 40% of the cost is borne by the general fund.

APPENDIX A

GUIDANCE NOTE

Introduction

The Department of the Environment and the Welsh Office issued a joint Practice Note in August 1990 to give guidance to authorities in England and Wales as to the criteria which they should take into consideration in the exercise of the discretion to grant rate relief. The note says that the criteria are not intended as a rigid set of rules and that it is for each authority to judge whether they are applicable in each case and what weight should be attached to them.

This Practice Note has now been supplemented by guidance issued by the Office of the Deputy Prime Minister ('Guidance on rate reliefs for charities and other non-profit making organisations) in December 2002, which particularly focuses on the situation of sports clubs. The section of the guidance note concerning sports clubs is, accordingly, reproduced below.

Practitioners should also take particular note of the advice contained in the guidance relating to circumstances where rate relief may count as 'state aid'. This is set out in **Appendix B** to the guidelines.

Advice

The Practice Note recommends that:-

- a) Authorities will wish to have readily understood policies for deciding whether or not to grant relief, and for determining the amount of relief. They should not, however, adopt a guidelines or a rule which allows a case to be disposed of without any consideration as to its individual merits. Any criteria by which the individual case is judged should be made public to help interested individuals and bodies.
- b) Although there is no statutory requirement for organisations to submit applications for relief, thus not precluding authorities from taking an initiative to grant relief if it so wished, authorities should encourage organisations to give details of all the matters they wish to be taken into account, and to provide any other relevant information such as audited accounts, constitution, membership details etc.
- c) Authorities should consider notifying organisations of the reasons why relief has not been granted so that they can take steps to conform to the criteria which the authority has adopted.

Criteria

The criteria contained in the Practice Note is described only as 'examples which might be adopted', and reads as follows:-

- a) Access

Is membership open to all sections of the community?

- There may be legitimate restrictions placed on membership which relate (i.e. to ability in a sport or to the achievement of a standard in the field covered by the organisation or where the capacity of the facility is limited). Clubs or

organisations should not be considered if they have membership rates set at such a high level as to exclude the general community. In general, the club or organisation must be prepared to show that the criteria by which it considers applications for membership are consistent with the principles of open access.

- Does the organisation actively encourage membership from particular groups in the community, for example young people, women, older age groups, persons with a disability, ethnic minorities etc.? An organisation which encouraged such membership might expect more sympathetic consideration than one which made no effort to attract members from groups which the authority considered to be particularly deserving of support.
- Are the facilities made available to people other than members (e.g. schools, casual public sessions etc.)? The wider use of facilities should be encouraged, and rate relief might be one form of recognition that an organisation was promoting its facilities more widely.

b) Provision of facilities

- Does the organisation provide training or education for its members? Are there schemes for particular groups to develop their skills (i.e. young people, the disabled, retired people)? An organisation providing such facilities might deserve more support than one which did not.
- Have the facilities available been provided by self-help or grant aid? The fact that a club uses or has used self-help for construction or maintenance or had facilities funded by grant aid might be an indicator that they were more deserving of relief.
- Does the organisation run a bar? The mere existence of a bar should not in itself be a reason for not granting relief. The authority should look at the main purpose of the organisation. In sports clubs, for example, the balance between playing and non-playing members might provide a useful guide as to whether the main purpose of the club is sporting or social activities. A social club whose main aim is to bring together people with similar interests should not be excluded from relief just because of the existence of a licensed bar.
- Does the organisation provide facilities which indirectly relieve the authority of the need to do so, or enhance and supplement those which it does provide? Authorities should not refuse relief on the grounds that an organisation is in competition with the authority itself, but should look at the broader context of the needs of the community as a whole. Provision of facilities to meet a new need, not being provided by the authority itself but identified as a priority for action, might be particularly deserving of support.

c) Other considerations

- Is the organisation affiliated to local or national organisations (i.e. local sports or arts councils, national representative bodies) and are they actively involved in local / national development of their interests?
- Is the membership drawn from people mainly resident in the charging authority's area? Although authorities will have in mind that 25% of the cost of any relief given will be borne by charge payers in their area, particular

difficulties may arise with hereditaments which straddle local authorities' boundaries and which . . . fall to be shown in one list. In these cases and in those where hereditaments are situated close to an authority's boundary, a proportion of the membership may come from another authority's area. Also, for geographical reasons, or because of the nature of the terrain, particular facilities may be the only ones available for a wide area. In such case, the joint use of facilities by one or more similar organisations is not uncommon. In most cases there will be a measure of reciprocity between the memberships of organisations from different areas.

- Authorities may wish to add further criteria or substitute relevant criteria which are appropriate to the furthering of their policies and the needs of the community, such as development programmes. They should also bear in mind the need to encourage new activities in the wide range of organisations for which relief from rates is available.

APPENDIX B

STATE AID

The issue of some rating reliefs being considered as qualifying as 'state aid' is now of some significance and is briefly explained in the guidance note issued by the Office of the Deputy Prime Minister in December 2002. This document, which is prefaced by the comment that it "*should not be taken as exhaustive guide to the complex rules and case of EU state aid*", is reproduced below, for information.

European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. Billing authorities should bear this in mind when granting discretionary rate reliefs.

Empty property and transitional reliefs are regarded as part of the determination of liability, applied equally to all ratepayers, and so are not considered to be state aid.

Rate relief for charities and non-profit making bodies is not normally considered to be state aid because the recipients are usually not in market competition with other businesses. However, if the charities or non-profit making bodies are engaged in commercial activities or if they are displacing an economic operator or if they have a commercial partner, rate relief could constitute state aid, and the rules set out below will apply.

Hardship relief can also constitute state aid, as can relief under the village shop and farm diversification schemes. In practice, however, aid to village shops, most local 'commercial' charities and other small-scale local service organisations (e.g. B&Bs, small retailers, child-care facilities etc.) will not be caught by the state aid rules as long as they are independent family-owned businesses, because they are deemed incapable of affecting intra-Community trade. Any manufacturing operation, on the other hand, however small-scale, is normally deemed to be capable of affecting intra-Community trade, so rate relief for butchers and farmers for example, producing cheese, sausages, cider and other foodstuffs, would be state aid.

There are also general exceptions from the state aid rules where the aid is below a 'de minimis' level. This is 200,000 Euros, or 100,000 Euros for the road transport sector, to any one business over three years (**Article 2 EC 1998/2006**). The de minimis level applies to all de minimis aid received, including other Government subsidies or grants, in addition to any rate relief. There are also specific exemptions to the de minimis threshold and regard should be had to the current EC regulation.

The guidance note goes on to say that where relief does constitute state aid, it may need legal clearance from the European Commission. Authorities that are considering granting any hardship relief, charity relief or farm diversification relief which would be caught by the state aid rules and would bring total aid to the business concerned above the de minimis level, or granting any amount to businesses in the excluded sectors are advised to contact the Office of the Deputy Prime Minister, which will, if necessary, seek clearance from the European Commission. If Commission clearance is needed, it goes on, the relief should not be paid until clearance has been granted.

The guidance note, further, offers advice to authorities on questions relating to state aid, this being available from the State Aid Branch of the Department of Trade and Industry.

It has also been found that a valuation methodology that favours one ratepayer against another in a similar class can be held to be State Aid.

APPENDIX C

HBBC Criteria

Discretionary Relief Rates Relief

1. Charitable Organisations.

Charitable organisations, which are receiving 80% mandatory rate relief (with the exception of educational or business training establishments and charity shops in Castle Street, Hinckley), will be considered for further (discretionary) rate relief dependent upon the following requirements.

- (a) The organisation should bring a net social, environmental or economic benefit to the community, and in this way contribute to the sustainable development of the borough.
- (b) The organisation must demonstrate that its activities directly meet a local need, either by contributing to the implementation of the Hinckley and Bosworth Community Plan (or another Council approved initiative), or through other evidence.

Entitlement to Relief

- (I). For the organisation to qualify for the maximum 20% discretionary relief (subject to a £6,000 limit) both of the above requirements must be met.
- (II). If only requirement (a) detailed above is met then 10% discretionary relief (subject to a £6,000 limit) will be granted.
- (III). If only requirement (b) detailed above is met then no discretionary relief will be granted.
- (IV). If neither of the above requirements are met then no discretionary relief will be granted.

2. Non Profit Making Organisations

All applications for discretionary rate relief will be considered from all types of organisations on their merits but having regard to these guidelines. The guidelines will be reviewed from time to time so that they are consistent with the Council's prevailing policies. If the Council considers the organisation applying for relief is charitable, then it will be advised to seek charitable registration prior to any request for discretionary relief being considered. In such circumstances the Council may provide advice and general assistance to the organisation.

Applications will be considered having regard to the organisation's constitution, and financial accounts. Copies of the organisation's constitution and latest set of financial accounts should be sent with the completed application. Responses to the questionnaire will be considered as follows:

(a) Access

Membership should generally be open to all members of the community. There may be legitimate restrictions placed on membership, which relate for example to ability in

a sport or to the achievement of a standard in the field covered by the organisation or where the capacity of the facility is limited. Clubs or organisations will not be considered if they have membership rates set at such a high level as to exclude the general community. In general the club or organisation should show that the criteria by which it considers applications for membership are consistent with the principle of open access. Organisations that actively encourage membership from particular groups will receive more sympathetic consideration. The Council encourages the wider use of facilities to people other than members and will give more favourable consideration to organisations that promote their facilities more widely.

(b) Provision of Facilities

More sympathetic consideration will be given to organisations, which can demonstrate that they provide training or education for its members; provide schemes for particular groups to develop their skill; and have provided facilities by self-help or funded, by grant aid. The mere existence of a bar will not in itself be a reason for not granting relief. The council will take into account in the case of sports clubs the balance between playing and non-playing members and in the case of social clubs the purpose of the organisation which in both cases the bar may be considered incidental.

(c) Other considerations

If the organisation is involved in local/national development of their interests it will be advantageous in considering their application, as will organisations which mainly draw their membership from within the Council's area.

When considering applications the Council will generally take into account the contribution which the organisation makes to the amenities of the Borough. In particular, preference will be given to organisations that provide facilities, which indirectly relieve the Borough Council of the need to do so, or enhance and supplement those which it does provide. Organisations which provide and seek to encourage the use of such facilities to all sections of the community will receive more sympathetic consideration than those, which make no effort to attract members from groups listed in Question 11 which the Council consider to be particularly deserving of support.

Those organisations providing sporting facilities such as pitches, courts etc will be looked upon most favourably. Organisations, however, which only provide traditionally recognised bar games and/ or the following recreational activities will not be considered as sporting facilities for the purpose of applying these guidelines: darts, snooker, pool, billiards, other bar games, card games and the like.

- (e) The organisation should demonstrate that its activities directly meet a local need, either by contributing to the implementation of the Hinckley and Bosworth Community Plan or other Council approved initiatives.
- (f) The organisation must bring a net social, environmental or economic benefit to the community, and in this way contribute to the sustainable development of the borough.

Entitlement to Relief

- (I). If an organisation meets all the requirements outlined in paragraphs (a) to (f) above, then 100% discretionary relief will be granted (subject to a £6,000 limit).
- (II). If any one of the requirements outlined in paragraphs (b) to (e) above are not satisfied, then discretionary relief will be restricted to 50% (subject to a £6,000 limit).
- (III). If either of the essential requirements outlined in paragraphs (a) and (f) above are not satisfied, then no discretionary relief will be granted.
- (IV) If more than one of the requirements outlined in paragraphs (a) to (f) above are not satisfied, then no discretionary relief will be granted.

Once granted, relief will continue from year to year providing there is no change in the organisation's activities.

APPENDIX D

CRITERIA

Discretion to award rate relief to all types of businesses

In exercise of the Council's general power to award discretionary rate relief (*awards under Section 47 of the Local Government Finance Act 1988 as amended by Section 69 of the Localism Act 2011*)

Section 69 of the Localism Act 2011 amends the 1988 Act to allow local authorities the discretion to award rate relief to all types of businesses. The Plain English Guide to the Act addresses this as follows:

"The Localism Act gives councils more freedom to offer business rate discounts - to help attract firms, investment and jobs. Whilst councils would need to meet the cost of any discount from local resources, they may decide that the immediate cost of the discount is outweighed by the long-term benefit of attracting growth and jobs to their area."

This section sets out the Council's agreed policy for dealing with applications from such cases.

General Requirement

Applications for rate relief under this section of the Policy will normally only be considered favourably where the Council is satisfied that an award will result in tangible benefits to local residents and in particular where the award will directly result in attracting businesses, investment or jobs to the local area.

Maximum Amount of Awards

The Localism Act allows scope for the Council to award up to 100% rate relief in any one year for qualifying businesses. The maximum amount awarded shall normally be limited to no more than 50% of the rate liability except where there are exceptional circumstances which justify a greater amount.

Duration of Awards

Each amount of rate relief awarded under this policy shall normally apply for no more than one financial year at a time but new applications may be made each financial year.

In exceptional circumstances and where each of the following conditions are met an award may be made for up to three financial years:

- i) The award relates to Non-Domestic Rates payable in respect of a new hereditament or an increase in rateable value of an existing hereditament;
- ii) New employment opportunities will be created as a result of the new hereditament or enhancements to an existing hereditament;

iii) The award is considered to be essential to securing the development of the hereditament;

iv) The award will not result in a lower amount of retained rates yield in respect of the hereditament than that retained prior to the development.

Information to Support Applications

All applicants are required to complete the Council's rate relief application form. Such information and evidence as the Council requires must be provided to support an application and in the event that the requested information and evidence is not provided the application may be refused.

In submitting an application the ratepayer must demonstrate with verifiable supporting evidence the benefits to the Borough's Council Taxpayers that will accrue from making an award.

On receipt Council officers will prepare a report setting out the merits of the application. This report will detail, amongst other elements the economic, social and environmental benefits that may derive from granting the application.

Relationship to other forms of Rate Relief

Applications under this section will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible (excluding hardship rate relief).

Guidelines for Making Awards

Each application will be considered on its individual merit but in making a decision on the award the following factors must be considered by the decision maker:

- i) That awards should only be made in exceptional circumstances;
- ii). The value of any previous awards and the benefits to local Council Taxpayers realised from previous awards;
- iii) The cost to the Council, including the loss of income or of retained rates yield, in making an award;
- iv) The impact of the cost or loss of income in relation to the Council's overall financial situation;
- v) The benefits to the Borough's Council Taxpayers in making an award, and in particular whether the award will directly result in attracting businesses, investment or jobs to the local area;
- vi) The impact on other Non-Domestic Ratepayers in the Borough;
- vii) The Council's statutory equality duties;
- viii) That awards should normally only be made where the ratepayer's activities in the Borough will contribute towards the aims and objectives of the Corporate Plan;
- ix) The extent to which an award will support the Council's aspiration to promote and encourage economic growth, and in particular growth in the Non-Domestic Rating tax base and in employment opportunities for residents of the Borough;
- x) The overall profitability of the business

BUSINESS RATES – RETAIL RELIEF SCHEME

The coalition government announced as part of the chancellor's autumn statement that occupied properties with a rateable value of £50,000 or less can apply for up to £1,000 relief from their non domestic rates. This relief is centred on hereditaments that are wholly and mainly used as shops, restaurants, cafes and drinking establishments.

Legislative Framework

The award of any relief is at the discretion of Hinckley & Bosworth Borough Council and is made under Section 47 of the Local Government Finance Act 1988 as amended by the Localism Act 2011.

Scheme Statement

It is the intention of Hinckley & Bosworth Borough Council to exercise its powers under S47 LGFA 1988 to award Retail Relief to all 'qualifying' ratepayers.

1) Duration of Scheme

The Scheme will last for the financial years 2014/15 and 2015/16 only.

2) Granting of Relief

As the granting of the relief is discretionary, Hinckley & Bosworth Borough Council may choose not to grant the relief if they consider that appropriate, for example where granting the relief would go against the authority's wider objectives for the local area.

3) Qualifying Properties

Properties that will benefit from the relief will be occupied properties with a rateable value of £50,000 or less, that are wholly or mainly being used as shops, restaurants, cafes and drinking establishments.

The Council considers shops, restaurants, cafes and drinking establishments to mean:

- i. Properties that are being used for the sale of goods to visiting members of the public:

| | | |
|--------------------|----------------------|------------------------------|
| FLORIST | STATIONERS | CHARITY SHOPS |
| BAKERS | OFF LICENCE | OPTICIANS |
| BUTCHERS | CHEMIST | POST OFFICES |
| GROCERS | NEWSAGENTS | FURNISHING SHOPS |
| GREENGROCERS | HARDWARE STORE | DISPLAY SHOPS |
| JEWELLERS | SUPERMARKETS | CARPET SHOPS |
| DOUBLE GLAZING | GARAGE DOORS | CAR SHOWROOM |
| CARAVAN SHOW ROOMS | SECOND-HAND CAR LOTS | MARKETS |
| PETROL STATIONS | GARDEN CENTRES | ART GALLERIES (Art for sale) |

This list is not intended to be exhaustive and may be added to

- ii. Properties that are being used for the provision of the following services to visiting members of the public:

| | | |
|--------------------------|---------------------------|-------------------|
| HAIR AND BEAUTY SERVICES | HAIR DRESSERS | NAIL BARS |
| BEAUTY SALONS | TANNING SHOPS | TRAVEL AGENTS |
| TICKET OFFICES | DRY CLEANERS | LAUNDERETTES |
| PC/TV REPAIR | DOMESTIC APPLIANCE REPAIR | FUNERAL DIRECTORS |
| PHOTO PROCESSING | DVD/VIDEO RENTALS | TOOL HIRE |
| CAR HIRE | SHOE REPAIRS | KEY CUTTING |

This list is not intended to be exhaustive and may be added to

- iii. Properties that are being used for the sale of food and/ or drink to visiting members of the public:

| | | |
|--------------|---------------|----------------|
| RESTAURANTS | TAKEAWAYS | SANDWICH SHOPS |
| COFFEE SHOPS | PUBLIC HOUSES | BARS |
| | | |

This list is not intended to be exhaustive and may be added to.

4) Non-Qualifying Properties

The list below is of properties that do not qualify for retail relief and is based on the types of uses that the Government does not consider to be retail use for the purpose of this relief.

- i. Properties that are being used for the provision of the following services to visiting members of the public:

| | | |
|--------------------|---------------------|----------------------------|
| FINANCIAL SERVICES | BANKS | BUILDING SOCIETIES |
| CASH POINTS | BUREAU DE CHANGE | PAYDAY LENDERS |
| BETTING SHOPS | PAWN BROKERS | ESTATE AGENTS |
| LETTING AGENTS | EMPLOYMENT AGENCIES | MEDICAL SERVICES |
| VETINARY SERVICES | DENTISTS | DOCTORS |
| OSTEOPATHS | CHIROPRACTORS | PROFESSIONAL SERVICES |
| SOLICITORS | ACCOUNTANTS | INSURANCE AGENTS |
| FINANCIAL ADVISERS | TUTORS | POST OFFICE SORTING OFFICE |

ii. Properties that are not reasonably accessible to visiting members of the public

| | | |
|------------------------------------|--|--|
| Shops providing Bluetooth services | Shops used for advertising purposes only | Shops used for marketing purposes only |
|------------------------------------|--|--|

5) Amount of Relief Available

- The total amount of Retail Relief available for each property for each of the years under this scheme is £1,000. The amount does not vary with rateable value and there is no taper. There is no relief available under this scheme for properties with a rateable value of more than £50,000.
- The eligibility for the relief and the relief itself will be assessed and calculated on a daily basis. The following formula will be used to determine the amount of relief to be granted for a particular property in the financial year:

Amount of relief to be granted = £1000 x A/B

Where: A is the number of days in the financial year that the property is eligible for relief; and B is the number of days in the financial year

- The relief will be applied against the net bill after all other reliefs.
- Where the net rate liability for the day after all other reliefs but before retail relief is less than the retail relief, the maximum amount of this relief will be no more than the value of the net rate liability. This will be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.
 - i.e. If the net rate liability is £500 the Retail Relief = £500
- Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties, subject to State Aid de minimis limits.

6) Splits, Mergers and changes to existing properties

The relief will be applied on a day to day basis using the formula set out above. A new property created as a result of a split or merger during the financial year, or where there is a change of use, will be considered afresh for the relief on that day.

APPENDIX F

COUNCIL TAX, NON DOMESTIC RATES (BUSINESS RATES) AND BENEFITS OVERPAYMENTS RECOVERY POLICY

INDEX

- 1.0 Policy Aims
- 2.0 The Revenues Service Customer Commitment
- 3.0 Payment Arrangements
- 4.0 The Council's Recovery Principles for Council Tax, Business Rates and Housing Benefit Overpayments.
- 5.0 The Council's Recovery Process for Council Tax and Business Rates
- 6.0 The Council's Recovery Process for Housing Benefit Overpayments
- 7.0 Absconders
- 8.0 Write Offs

Appendix 1 – Vulnerability Criteria

Appendix 2 – National Standards for Enforcement Agents 2012 and Bailiff Code of Practice

Appendix 3 - Council Tax and Business Rates Recovery Flow Charts

1.0 Policy Aims

The aims of this policy are to:

- Help minimise debts to the Authority and improve the Council's income levels through the efficient and effective collection of Council Tax, Business Rates and Benefit Overpayments;
- Effectively pursue all amounts due to the Council so that all customers who have the ability to pay do so;
- Ensure that the customer's circumstances (where known) are taken into account when deciding the most appropriate form of recovery action to take;
- To ensure that a balance is achieved for the customer and other customers by handling debt cases sensitively yet still taking pro-active, robust action in order to maximise income to the council and reduce the impact on other customers.
- Treat individuals consistently and fairly, regardless of age, sex, gender, disability, race and sexual orientation, and;
- Protect individual rights under Data Protection and Human Rights legislation.

Handling debt cases sensitively

A prime intention of the Council is to operate sensitive debt recovery procedures which do not place the individual in hardship and where possible do not affect a business' financial viability. This will be achieved by having realistic, flexible methods of payment that can be adapted to the circumstances of the customer.

Prevention is the first essential step in the effective recovery of debt. There are a number of measures that can be taken to minimise indebtedness at an early stage which reduces the necessity for costly enforcement action. This not only reduces cost but also works towards avoiding potential hardship for customers.

To achieve this, the Council promotes early contact with customers, establishes the correct amount that is payable and makes mutually acceptable arrangements to pay.

At all stages of billing, collection and recovery of Council Tax, Business Rates and Benefit Overpayments, the Council will give customers the opportunity to make individual arrangements to pay. Where a customer defaults on the arrangement on more than two occasions, this facility will be withdrawn and only re-instated if payment is made to bring the arrangement up to date or the customer contacts the Council to renegotiate payments. If no contact is received, alternative enforcement options will be considered.

The Council will promote the take-up of all available reductions for Council Tax and Business Rates to reduce our customers' liability where circumstances allow. Where an application for relief, a reduction or Council Tax Support is pending, recovery action will be suspended to allow time for the application to be processed.

The Council when discharging the functions to which this policy relates will comply with the relevant legislation and have regard to relevant government guidance and policy.

The Council recognises that the voluntary sector advice agencies, debt support organisations and Credit Unions that operate in the Council area have a key role to play in both the prevention of debt and the debt recovery process. As such the Council will continue to support and work in partnership with such organisations.

At all stages of the recovery and enforcement process, the Council will aim to minimise any additional costs to customers by communicating proactively with those in arrears and publicising the next steps should contact not be made. This would lead to further recovery action being undertaken and additional costs being incurred at the latter stages of the enforcement process.

Realigning Payment Methods and Procedures

This policy document works in conjunction with the Partnership's aligned policy on Payment Methods/Arrangements, which is subject to separate approval by Members.

2.0 The Revenues Service Customer Commitment

The Revenues Service will:

- Provide an accurate, clear and prompt billing service, ensuring that reminders and notices are issued in a timely manner, meeting all legal requirements.
- Respond quickly to customers' changes in circumstances and take those changes into consideration when we determine the most appropriate action to be taken.
- Provide an accurate and prompt assessment of Council Tax Support and Housing Benefit claims including assisting customers in completing the relevant forms.
- Encourage customers, or their pre-authorised representatives, to make contact as soon as possible where they will have difficulty in making or maintaining their payments.
- Advise customers or refer them to the relevant organisations/agencies if there is a likelihood of other benefit entitlement or they require money advice.
- Aim to deal with cases of multiple debts on a corporate basis.
- Have regular liaison meetings with relevant agencies.
- Respond positively to all recommendations made by those agencies.
- Conduct all recovery action in accordance with the procedures attached to this policy. (See sections 4.0 and 5.0).
- Make every reasonable effort to contact customers at an early stage in the recovery process.
- Work with people in debt, or at significant risk of getting into debt, to set payment arrangements they can afford and to stay in touch with customers until their debts are cleared.
- Ensure all payment arrangements are mutually agreed between the Council and the customer.
- Keep customers informed of the action being taken and other types of action that may be taken.
- Communicate in 'Plain English' without using jargon or unnecessary technical or legal content.
- Provide support for vulnerable customers through home visits as required.
- As required, make appropriate translation services available to customers.
- Support businesses who are suffering financial difficulty by giving advice regarding reliefs, including mandatory and discretionary relief and small business rate relief.
- Deal with complaints in line with the Council's Corporate Complaints Policy.

3.0 Payment Arrangements

The Council will do everything it can to help residents to make the most of their incomes and reduce their debts before they become a problem. By agreeing reasonable arrangements, the Council will seek to avoid, where possible, additional court costs, collection agent fees and administration fees being added to the debt. All payment arrangements will be sustainable for the customer, taking into account their income, expenditure and savings. Documentary evidence will only be requested where absolutely necessary.

When making arrangements to pay, the Council will seek to clear debts within the financial year of the liability. Where this is not possible, the Council will seek to reach an agreement that allows, as a minimum, the payment of the continuing liability plus an affordable amount off any arrears. Arrangements will be assessed based upon the affordability and sustainability for payment and seek to ensure that the debt is paid off within a reasonable period.

Any customer who wishes to amend the level of payment under an arrangement may have their case reviewed by a member of the Enforcement Team.

Where customers are likely to be entitled to welfare benefits they will be signposted to the most appropriate agency.

When agreeing an arrangement to pay with a customer, where appropriate, Enforcement Officers will refer to the Guidance on Vulnerability (Attached Appendix 1 – Vulnerability Criteria). The guidance will be updated upon completion of the Government's consultation on enforcement reform.

Payment dates outside of normal schedules will be negotiated to assist the customer.

Should a customer default on a payment arrangement, the Council will expect the customer to bring the arrangement up to date, unless there has been a significant change in their circumstances. In this case the payment arrangement will be re-negotiated. If payment is not received or, a renegotiation of the arrangement is not agreed, alternative enforcement options will be considered.

All payment arrangements will be agreed with the customer or their nominated representative.

Customers will be advised of other organisations that can provide debt advice.

Whether the arrangement is made by telephone or by personal contact, the Council will confirm the arrangement in writing, clearly detailing the arrangement and the consequences of not meeting the payments.

4.0 The Council's Recovery Principles for Council Tax and Business Rates and Benefit Overpayments

The Council will follow the principles and processes (as laid down in statute) outlined below for Council Tax, Business Rates and Housing Benefit Overpayments. All recovery actions are undertaken in accordance with the relevant Act and regulations.

Every demand for money will be correctly addressed to the person who is liable to pay it. The name on the demand will be that of a person or body possessing "legal personality"

Demands will, wherever possible, be issued on the day of production.

All notices issued by the Council will comply with the corporate style guidance and be readily identifiable as being from the Council. All bills and notices will be clear, accurate and timely indicating what must be paid and when.

The Council will ensure that all follow up recovery documentation is clear and informative so that customers are fully aware of the procedures and consequences and options available.

In the interest of economy and where appropriate all demands, reminders and final notices shall be issued by 2nd class post unless contrary to regulations or other statutory or legal requirements.

All relevant information relating to a demand will be kept either in paper or scanned image format until at least six years after the demand is raised. If at the end of that six-year period the demand still remains unpaid, the supporting documentation will be retained until either the bill is paid or the debt is written off.

The Council will attempt at all times to use the most appropriate and effective method of debt recovery in order to maximise income.

The Council will encourage the most cost effective payment methods with the emphasis being on unmediated electronic means where possible. "Unmediated" in the context of electronic payment methods means a method of payment that requires no human intervention by officers of the Council to achieve its crediting to the account in question.

Debts should be collected within the accounting period and before the next amount due. Anything other than this will lead to more hardship and perhaps start a downward spiral on the ability of the customer to manage all debts.

Officers will be able to intervene in the recovery cycle in appropriate circumstances to deal with hardship or dispute situations. This includes the ability to make deferred payment arrangements where immediate payment is impossible due to lack of means. Recovery procedures should not be so rigid as to:-

- Cause unnecessary hardship
- Prevent an individual approach and flexibility where appropriate

Equality and diversity considerations will be taken into account in accordance with the Council's Equalities Policy. Specifically staff seeking to recover debts will have regard to:

- Ensuring information is accessible through translations, larger print versions or sign language, as appropriate to the needs of the customer
- The need for home visits where the customers are unable to access advice services

Where the potential for a statutory benefit or discount exists in relation to the debt, efforts will be made to make the customer aware of such opportunities and they will be assisted and encouraged to apply for these.

The authority will do everything possible to calculate benefit entitlement quickly and accurately.

The Council will encourage people with payment problems to come forward early to discuss their individual circumstances.

The Council welcomes the involvement of welfare agencies where authorised by the customer in connection with debts due to the Council and recognise the benefits that these organisations can offer both the customer and the Council in prioritising repayments to creditors and in maximising income available to the customer.

The Council recognises and values the provision of advice from various agencies and will work in conjunction with them for the benefit of the customer. The list of agencies will include;

- Age UK
- Citizens Advice Bureau (CAB)
- Shelter
- Money Advice Organisations such as the Money Advice Service, the National Debt Line, Gov.uk etc

In cases where there are multiple debts, the Council will ensure that there is close liaison between departments to provide a corporate approach to the recovery of the amounts owing. Multiple debts are where a customer has significant debts in more than one service area e.g. council tax and housing rent arrears. Such cases can present problems in determining the relative priority of the individual debts for both the individual concerned and the staff preparing settlement.

Overall the Council's approach will be a proactive one to provide for multiple debt payment. In assessing the payment we will have regard to:

- The size of the debt
- Its relative priority, a decision needs to be made as to the Council's priority of debt management and allocation of payments.
- Consequences of failure to pay
- Circumstances of the customer
- Increases in the debt

The Council recognises that prompt recovery action is key in managing its debt and maximising income. The Council therefore aims to:

- Regularly monitor the level and age of debt.
- Set clear targets for the recovery of debt.
- Have clear written recovery procedures.
- Set priorities for specific areas of debt and assess recovery methods to ensure maximum recovery.
- Regularly review irrecoverable debts for write-off.

All accounts that are written off will be written off against the income code against which they are raised.

Where external Enforcement Agents, i.e. bailiffs, are employed to assist with the delivery of a service, the flow of information between the Council and the agency should, wherever possible, be in a secure electronic format and strictly in accordance with the national standards for Enforcement Agents.

Where legislation permits, the Council will seek to levy and recover from the customer any and all costs/fees that are legitimately due from the customer to the Authority or its agents. Only in exceptional cases, where it would not be in the public interest to pursue costs/fees will they be waived. These cases would need to be referred to an Enforcement Team Leader or, where appropriate, a Partnership Manager.

Where either national or local performance indicators exist the Council will strive for top quartile performance and will publish our actual performance against these targets as required. Progress reports will be made available at regular intervals during the year.

We will ensure enforcement staff are adequately trained to deal with the public or their authorised representatives and provide clear advice on recovery matters. They will also refer customers to the appropriate benefits officer to provide advice and guidance on Council Tax Support and other Welfare Benefits.

We will also ensure that staff are provided with the names and contact details for Money Advice agencies in order to signpost customers to the most appropriate independent specialist advice and debt counselling.

General Enforcement Principles

The Council will follow the principles outlined below for Council Tax, Business Rates and Benefits Overpayments:

- Our action will be **proportionate**, allowing for a balance to be struck between the potential loss of income to the Council and the costs of compliance
- Our approach will be **consistent**, taking a similar approach in similar circumstances to achieve similar ends; this needs to be maintained, whilst at the same time taking into account the specific circumstances of each case.
- Our actions will be **transparent**; helping people to understand what is expected of them and what they should expect from the Council. It also means explaining clearly the reasons for taking any recovery/enforcement action.

Additionally our intention will be to be firm and fair and our manner will be courteous.

The Council will always promote Direct Debit as the preferred method of payment.

5.0 The Council's Recovery Processes for Council Tax and Business Rates

All recovery procedures are prescribed by statute and must be followed in accordance with the relevant Act and regulations.

Council Tax and Business Rates Recovery Procedure

A bill is issued giving 14 days notice of the first instalment.

Reminders will be issued on a monthly basis where the instalments have fallen into arrears. If a payment is not made within 7 days of the reminder then further action will commence.

If no Council Tax is paid within 7 days of the reminder, then a Summons will be issued for the balance of the remaining year's charge, also incurring court costs to the customer.

If the customer pays after the first reminder but then defaults a second time, a second reminder will be issued. If payment is not received following the second reminder, a statutory Final Notice must be issued before a Summons can be sent. The Final Notice advises that they have lost their right to pay by instalments and allows a further 7 days for payment of the remainder of the full years charge.

For Business Rates, no further reminder need be issued if a payment is not received during the 7 day period following the first reminder notice. It will progress straight to a Summons.

A complaint is laid before the Local Magistrates Court for a Summons to be issued. The Summons contains the electronic signature of the Clerk to the Magistrates Court.

Summonses should be issued by first class post, giving at least 14 days (plus time allowed for postage) notice of the Court Hearing. Court Costs are incurred at this point by the customer and will be included on the Summons. The Council must pay the Magistrates Court a specified fee for each Summons issued.

At the Court Hearing, Magistrates can only consider the 'liability to pay' of anyone appearing before the court. If the liability is proven or not contested and the customer has no legally valid defence, the Magistrates must grant a Liability Order.

Post Liability Order Enforcement Action

Once the Liability Order has been obtained from the Magistrates Court, the Council has a number of initial enforcement remedies available to them, which may include:

Council Tax Only

- Prosecution for failing to provide financial information
- Attachments of Earnings
- Deductions from DWP Benefits
- Attachment of Members' Allowances
- Enforcement Agent (Bailiff) Action
- Prosecution of employers for failing to implement Attachment of Earnings

Business Rates Only

- Enforcement Agent (Bailiff) Action

Requests for Financial Information

The Council, or their Enforcement Agents, may request certain relevant information from a customer, in relation to his or her employment, particularly the name and address of any employer and level of earnings and deductions. Customers are under a legal obligation to provide this information. If the information is not returned within 14 days a fine may be imposed.

Attachment of Earnings

Where the Council is aware of a Council Tax payer's employment details they will, in most cases, issue an order to the customer's employers to make deductions from their earnings. Employers are legally required to comply with the order and may deduct a nominal charge which is defined in law for each deduction made towards the costs of administering the order.

The amount being received under the order will be reviewed on a regular basis and where it is felt that this is insufficient to clear the debt outstanding within a reasonable time, the Council may either request a further attachment to earnings order to be made (maximum of two) or cancel the attachment and take alternative action to recover the amount due.

In cases where a customer will suffer hardship because of an attachment order, the circumstances of individual cases will be considered with a view to taking alternative action. This will usually be an arrangement to pay a lower amount than that prescribed under an attachment order which is acceptable to the Council. An attachment to earnings will only be cancelled in exceptional circumstances where suitable alternative action can be agreed.

Deductions from Welfare Benefits

In Council Tax cases, the Council may apply to the Department for Work and Pensions (DWP) for deductions to be made from DWP Benefits. The DWP regulations specify the fixed weekly amount deductible.

Deductions from Members Allowances

In Council Tax cases, the Council may apply to deduct amounts from Member's allowances. The sum to be deducted under the order is an amount equal to 40% of the aggregate attachable allowances payable to the debtor.

In addition to the steps that may be taken directly against a local authority member who is in arrears with amounts of council tax, **Section 106 Local Government Finance Act 1992** imposes a duty on a councillor whose payments are two months overdue to make a declaration to that effect, and to refrain from voting, at any meeting where certain financial matters are being dealt with.

Enforcement Agent (Bailiff) Action

Following the granting of a Liability Order, where a customer fails to make contact with the Council or fails to make or maintain a payment arrangement (including orders under attachments to earnings or deductions from benefit) the Council may issue instructions for an Enforcement Agent to visit the property.

At all times the Enforcement Agent will work to the Ministry of Justice 'National Standards for Enforcement Agents 2012' (See link to the Standards in Appendix 2), their own Code of Practice, the Council's Vulnerability Criteria (Appendix 1) and any Code of Conduct/Service Level Agreement the Local Authority may have in place.

Fees and charges associated with Enforcement Agent action will be charged in accordance with levels set out in the legislation. All charges associated with recovery will be kept regularly under review to ensure they are reasonable. Customers will be advised in writing at least 14 days prior to the visit and at the time of the visit by the Enforcement Agent of the amounts of fees that may be charged.

The Enforcement Agent may make an acceptable arrangement with the customer to repay the sums due or enter into a 'Taking Control of Goods' agreement on goods owned by the customer to satisfy the amount outstanding. 'Taking Control of Goods' is where the Enforcement Agent secures the debt against assets owned by the customer.

Actual removal and sale of goods will only take place in exceptional circumstances. All efforts will be taken in order to make an arrangement to pay including the obtaining of employment or benefit information that may lead to an order being made under an attachment to earnings or deduction from DWP benefit.

The Enforcement Agents work on behalf of the Local Authority. In the event of a complaint from the customer the Local Authority takes responsibility for undertaking a full investigation into the complaint, with a requirement that the enforcement company undertake their own review of the issues raised and respond to the Local Authority within corporate timelines.

Further recovery options available to the Council

Where the above forms of recovery action have either been unsuccessful, are not considered to be appropriate, or the customer has failed to make contact with the Council, the Council may pursue other recovery options that may have more serious implications for the customer.

These actions are:

- Committal Proceedings
- Charging Orders
- Insolvency (Bankruptcy or liquidation)

Any action to recover amounts by these methods will be considered on its merits on an individual case by case basis, having regard to the 'Recovery Checklist' completed by the Council's Enforcement Officers. This will include the following:

- A record of other actions already taken and reasons for why alternative methods of recovery are not appropriate, and
- Where little or no personal contact has been made details of at least one visit to the property, and
- A record of information gathered and the reasons for the proposed action.

In addition, the Council will have regard to the Vulnerability Criteria in Appendix 1 to assist in making decisions at all stages of recovery and in particular where an option such as bankruptcy is being considered.

Documentation issued to customers will include:

- Clear written warnings listing the consequences of failing to respond to the letter or notice,
- A date by which they must respond, and;
- Recommendations that customers suffering financial difficulty contact their local Citizens Advice Bureau, Business Support Agency or a Debt Advice Agency for debt advice.

Means Enquiry / Committal Proceedings

Committal proceedings can only be taken against a customer where the Enforcement Agent has certified there are insufficient goods on which to levy distress and may only be taken against individuals and not limited companies.

Where committal action is considered to be appropriate, the Council will write to the customer inviting them to attend an informal interview with Council Officers to discuss their financial and personal circumstances to resolve the matter to the satisfaction of the Council without the need to commence proceedings. This will be at a pre-arranged date and time.

Where the customer fails to respond or the Council is unable to agree arrangements to discharge the debt, the Council will apply to the Magistrates Court for a warrant with bail to be issued which requires the customer to attend the Magistrates Court, for a 'pre- means enquiry' hearing.

At the hearing the customer is given the opportunity to discuss their personal and financial circumstances to resolve the matter to the satisfaction of the Council without the need for a full means enquiry. On completion of the hearing, the Magistrates, with the assistance of Council Officers, will determine whether a full means enquiry is necessary.

Where a full means enquiry is required the customer will be advised that it would be prudent to seek legal representation at the hearing.

Where the customer does not attend Court on the day of the 'pre-means enquiry' hearing the Council will ask for a warrant without bail to be issued for a further hearing at the Magistrates Court for a full means enquiry to be carried out to see whether the non payment is due to 'wilful refusal' or 'culpable neglect'.

At the hearing the Magistrate may sentence the customer to a term of imprisonment not exceeding three months. The sentence can be suspended on whatever terms the Magistrates consider appropriate (usually on payment of a weekly or monthly amount). If the Magistrates decide that failure to pay was not due to wilful refusal or culpable neglect they have the power to remit all or part of the debt.

If a term of imprisonment is served, the relevant amount of Council Tax will be written off as irrecoverable. A part payment will also reduce the term of imprisonment by the ratio of payment to the total amount of the debt.

The majority of committal cases will be where there has been persistent refusal or avoidance of payment and the Magistrates will usually impose a suspended sentence and order the customer to make monthly or weekly payments. In these cases, actual imprisonment will only occur when there has been default on payment of such an order.

Charging Orders

Non-payment of Council Tax

The Council may make an application to the County Court for a charging order to be registered against a customer's property, where the amount of council tax outstanding is over £1,000. The costs associated with this type of action are high, and may be added to the amount of the order.

Following the granting of a charging order, if the debt is not paid the Council may apply to the County Court for an order for sale, which may result in the property being sold and the amount subject to the charging order, including costs, being paid from the proceeds of sale.

Non-Payment of Business Rates

The Charging order option is not available under the 1989 Regulations in respect of business rates. However if a customer(s) owns their business premises and are intending to sell the property, the Council may seek their agreement to registering a charge against their interest in the property. This means that they agree that the Council will be paid any rates due from the proceeds of the sale of the property. The Council will not attempt to recover any amount due which is covered by the agreement for a specified period. This period cannot be more than three years. Any amounts covered by the agreement may be subject to interest charges.

Insolvency

Bankruptcy

This option is only available where the customer is an individual. This course of action is not only administratively costly for all parties but can also have considerable impact both on the customer and members of the customer's household. Consequently, this will only be considered where:

- There has been repeated default in other types of recovery action.
- Other forms of recovery action are not appropriate.
- The customer owns the property which is the subject of the Council Tax or Business Rates or a second property and where the equity is likely (so far as the Council can assess) to be sufficient to cover both the amount of the debt and the costs of the bankruptcy and sale.
- The debt outstanding is above £2000.

No bankruptcy proceedings will take place without attempting to contact the customer or their representative.

The council will liaise with other council departments, public agencies or third sector organisations in order to ascertain the circumstances of the customer before pursuing this action.

A statutory demand will be served on the customer setting out the debt outstanding, and the options available to them to prevent further action, the time scales in which they need to respond (21 days), and direct contact details of officers dealing with the case. A guide to bankruptcy is available at www.gov.uk. No additional costs are incurred at this stage, and the Council may agree a payment arrangement with the customer.

Where, after 21 days, the customer has not responded to the statutory demand or the Council is unable to agree arrangements that will discharge the debt, the Council will consider whether a petition for the customer to be made bankrupt should be issued.

Before a petition is issued, the Council will make all reasonable attempts to find out what the customer's personal and financial circumstances are to determine whether they or other members of the household may fall within the Council's Vulnerability Criteria as described in Appendix 1. A petition for bankruptcy will only be taken after a full case file is presented to, and authorised by, a Partnership Manager.

Where, from information provided by the customer or their representative, or other sources there is evidence to suggest that the customer or other members of the household fall within the Council's Vulnerability Criteria the case will be reviewed by an Enforcement Team Leader to confirm that bankruptcy is appropriate.

Where the Council considers that bankruptcy action should continue, a petition will be served on the customer, advising them of the date and time of the bankruptcy hearing. The serving of a bankruptcy petition will result in significant costs being incurred.

It is essential that the customer attends this or any adjourned hearing to make representation to the judge as to why the order should not be made. Where the customer fails to attend, the Court will determine whether the issue of a bankruptcy petition should be made. Once the order has been made the matter will be referred to the Official Receiver for Trustees to be appointed.

Liquidation

Where the customer is a limited company the same criteria as for determining whether bankruptcy action is appropriate will be undertaken.

In appropriate cases, a formal request for payment will be sent to the customer advising them of the impending action and the consequences of this action being successful.

No additional costs are incurred at this stage, and the Council may agree a payment arrangement with the customer.

Where, after 14 days, the customer has not responded to the formal request or the Council is unable to agree arrangements that will discharge the debt, the Council will consider whether a petition for the winding up of the company should be issued.

Where a petition is served on the customer this will notify them of a date and time of the hearing in the High Court. The serving of a petition will result in significant costs being incurred.

It is essential that the customer attends this hearing or any adjourned hearing to make representation to the judge as to why the winding up order should not be made.

Where the customer fails to attend this will generally result in the company being wound up.

Once the company has been wound up the matter will be referred to the Official Receiver for a Liquidator to be appointed.

6.0 The Council's recovery procedures for Housing Benefit Overpayments

Initial recovery stages

When a housing benefit overpayment is created, the benefits assessor will initially check to see if the overpayment can be recovered from ongoing benefit. The amount of the deduction will be based on the benefit entitlement of each individual at the level prescribed in legislation.

If the customer is no longer in receipt of housing benefit the benefits team will raise an invoice requesting payment of the overpayment amount.

The customer has 14 days in which to pay in full or contact the Council to discuss a suitable payment agreement.

If payment or contact is not received, a reminder is issued. The reminder requests payment or contact within 14 days.

If no payment is received, the process is followed again with a second reminder ('Letter Before Action') being issued, allowing the customer a further 14 days to pay the amount outstanding or to contact the Council to make an agreement to pay. This notice informs the customer that should payment or contact not be received, the Council may commence civil proceedings through the County Court to obtain a County Court Judgement (CCJ) against them.

Prior to statutory methods of enforcement being taken, officers may use, where cost effective to do so, external collection agents, visits to the customer's home by designated Council Officers and telephone contact with the customer as an alternative means of recovering housing benefit overpayments.

All action taken in regard to housing benefit overpayments will be proportionate to the size of the debt outstanding and the Council will take into account the financial and personal circumstances of the customer when determining the appropriate form of action to take.

The level of debt and the circumstances of the customer may mean that it is either uneconomical for the Council to recover the debt, or it would cause a severe detrimental impact on the customer's wellbeing for the Council to continue recovery action. In these circumstances, the debt will be put forward for write off.

Housing Benefit Overpayments - Payment Agreements

If the customer contacts the council to make a payment agreement the following steps will be taken

- Review the customer's account to ascertain the level of debt outstanding
- Depending on the size of the debt and the circumstances of the customer, make an agreement over a period not exceeding 12 months. Build in three or six monthly review periods as required.
- If the above time scales are not feasible, request the completion of a full income and expenditure form from the customer.
- On return of the income and expenditure identify essential and non essential expenditure and determine a suitable payment plan for the customer.
- Set up the agreement on the system. Advise the customer in writing of the proposed payment agreement.

Once the agreement is in place, should the customer default on the agreement an agreement reminder will be issued requesting payment within 7 days. If payment is not made, an agreement termination letter will be sent after a further 14 days.

Once an agreement has been terminated, checks will be made against the DWP's Customer Information System, (CIS) to identify if the customer is in receipt of other welfare benefits. If they are, a request for a deduction from benefits will be sent to the DWP. The DWP will then deduct a legally prescribed amount from their benefit which will then be paid over to the Council.

Enforcement Options

Where a deduction from benefits is not possible, subject to a CCJ being obtained (this is required for most of the options listed below), all other statutory methods of enforcement of debts shall be available for use. These include:

- Attachments of Earnings (deduction of customer's wages, at source by employer)
- Warrants of Execution (the use of County Court bailiff, or High Court sheriff)
- Third Party Debt Orders (utilises the customer's bank account to extract payment)
- Charging Order (the debt is secured on the customer's house)
- Insolvency (petition for bankruptcy)

In order to pursue the above actions, a CCJ must be obtained in the County Court. Once a CCJ has been obtained the customer has 28 days in which to pay the debt in full before the CCJ takes effect. If payment is not received, the Council can return to the County Court to 'enforce the judgement'. In doing so, the Council may then utilise the enforcement remedies listed above.

Civil proceedings are only undertaken as a last resort as often the circumstances of the customer are such that it is not in their, or the Council's financial interests, to further pursue the debt. At each stage of the civil process a court fee is payable which the Council has to pay in order to take the action. The fee is then added to the customer's debt. It is not always possible to recover the debt/costs, therefore the Council will judge each case on its merits before taking this action.

7.0 Absconders

Where a customer leaves a property without notifying the Council of their forwarding address the Council will make every effort to trace their current whereabouts and to collect the amount outstanding.

This will include, where permitted by law, the sharing of information between other Council departments and the use of external tracing agencies.

8.0 Write Offs (all debts)

The Council recognises that where a debt is irrecoverable, prompt and regular write off of such debts is good practice.

The Council will seek to minimise the cost of write-offs to the local Council Tax and Business Rates payers by taking all necessary action to recover what is due. All debts will be subject to the full recovery, collection and legal procedures as outlined in this policy.

Irrecoverable debts will be referred to the authorised signatory at a pre-agreed frequency and in a pre-agreed format, in accordance with the Council's write-off policy document approved in 2012/13.

The limitations for writing off irrecoverable debts are those contained within the Council's Financial Regulations.

Appendix 1 - Vulnerability Criteria

A failure to maximise collection of Council Tax, Business Rates and Housing Benefit Overpayments will potentially put Council services at risk and increase the likelihood that customers who do pay on time will have to subsidise non-payers through future increases in the level of Council Tax.

The Council recognises that some customers will, due to their individual personal and financial circumstances have extreme difficulty in paying their council debts, and recovery action, particularly where an option under section six of this policy is being considered, may not be appropriate where these suggest the customer or other household members may be vulnerable in some way. The Council will ensure processes are in place to ensure that due regard is given to this group of customers.

A person may be considered vulnerable in the following circumstances. The list is not exhaustive and each case will be decided on its own merits:

- The person is elderly
- The person is seriously ill or mentally or physically disabled
- The person has communication or learning difficulties
- The person has young children and where there is severe deprivation
- The person has recently experienced a recent marital break up
- The person has recently been bereaved or made unemployed
- The person has difficulty in understanding written or spoken English.

Falling into one of these categories does not automatically mean that recovery action is not appropriate. The Council will make individual decisions based upon the individual circumstances of the customer to identify if recovery action is appropriate and, if so, what action to take.

Different recovery proceedings cannot be applied simultaneously to one customer, but can be applied subsequently if a debt remains outstanding. The choice of recovery action is made at the discretion of the Council's Enforcement Officers and will take into account the customer's circumstances on a case by case basis and the guidance within this Policy.

The Revenues Service may become aware of vulnerable customers following contact from the customer, their representative or once recovery action is instigated. Alternatively, this information may become available from other internal systems used by the Council, from other departments or from other support agencies.

Where the Enforcement Agent on visiting the customer has vulnerability concerns, he/she is required to return the case to the Council in order for the Council to decide upon the most appropriate recovery action.

The Government are currently consulting on enforcement reforms and may soon issue revised guidance on vulnerability. Should this occur, this Appendix will be updated to reflect the Government's latest position on vulnerability.

Appendix 2 – National Standards for Enforcement Agents 2012 and Bailiff Code of Practice.

The National Standards for Enforcement Agents 2012 can be found by going to:

<http://www.justice.gov.uk/downloads/courts/bailiffs-enforcement-officers/national-standards-enforcement-agents.pdf>

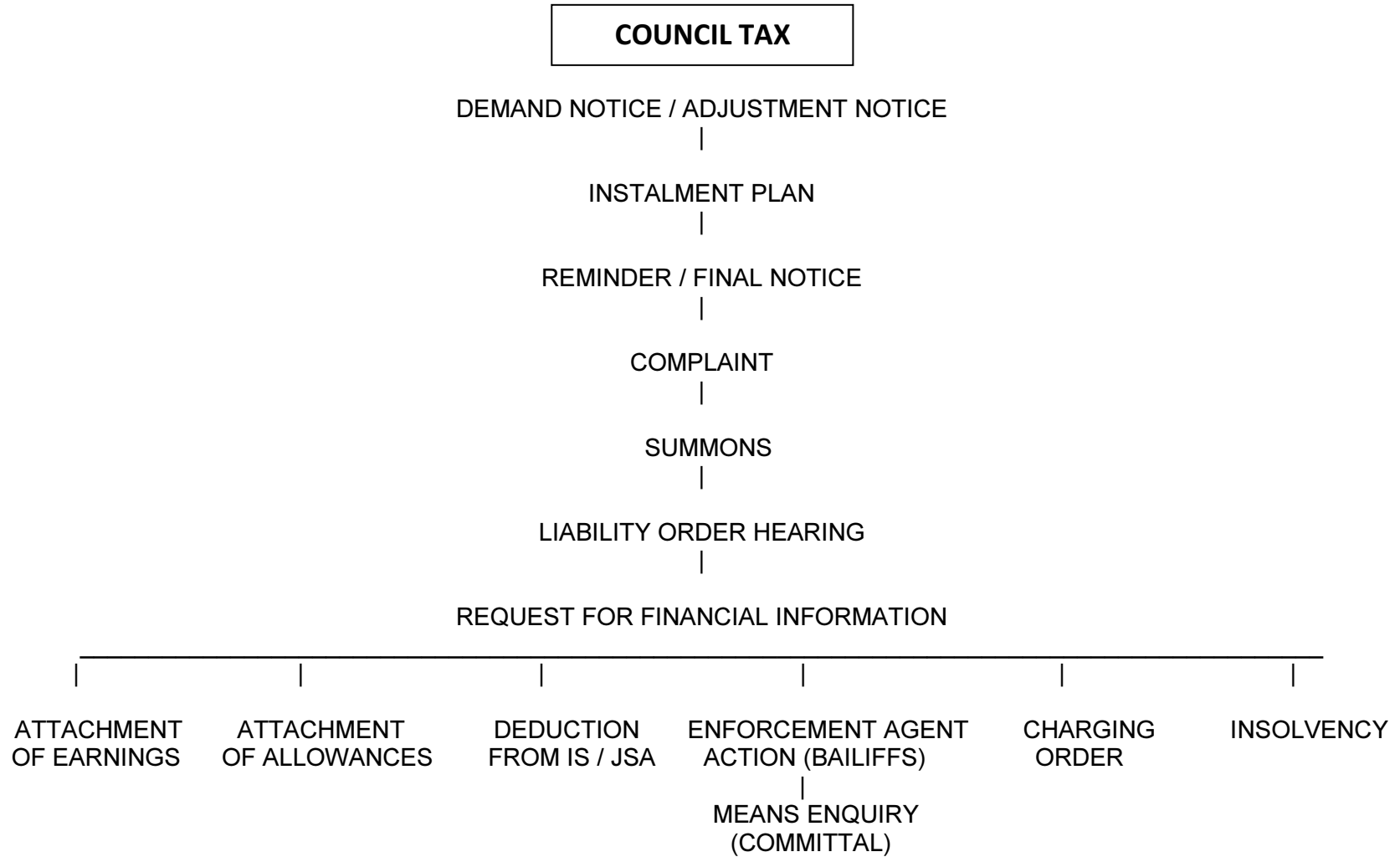
Bailiff Code of Practice

The company recognises its responsibility, both as an employer and as a service provider, to seek to ensure that it provides fair and appropriate treatment for all.

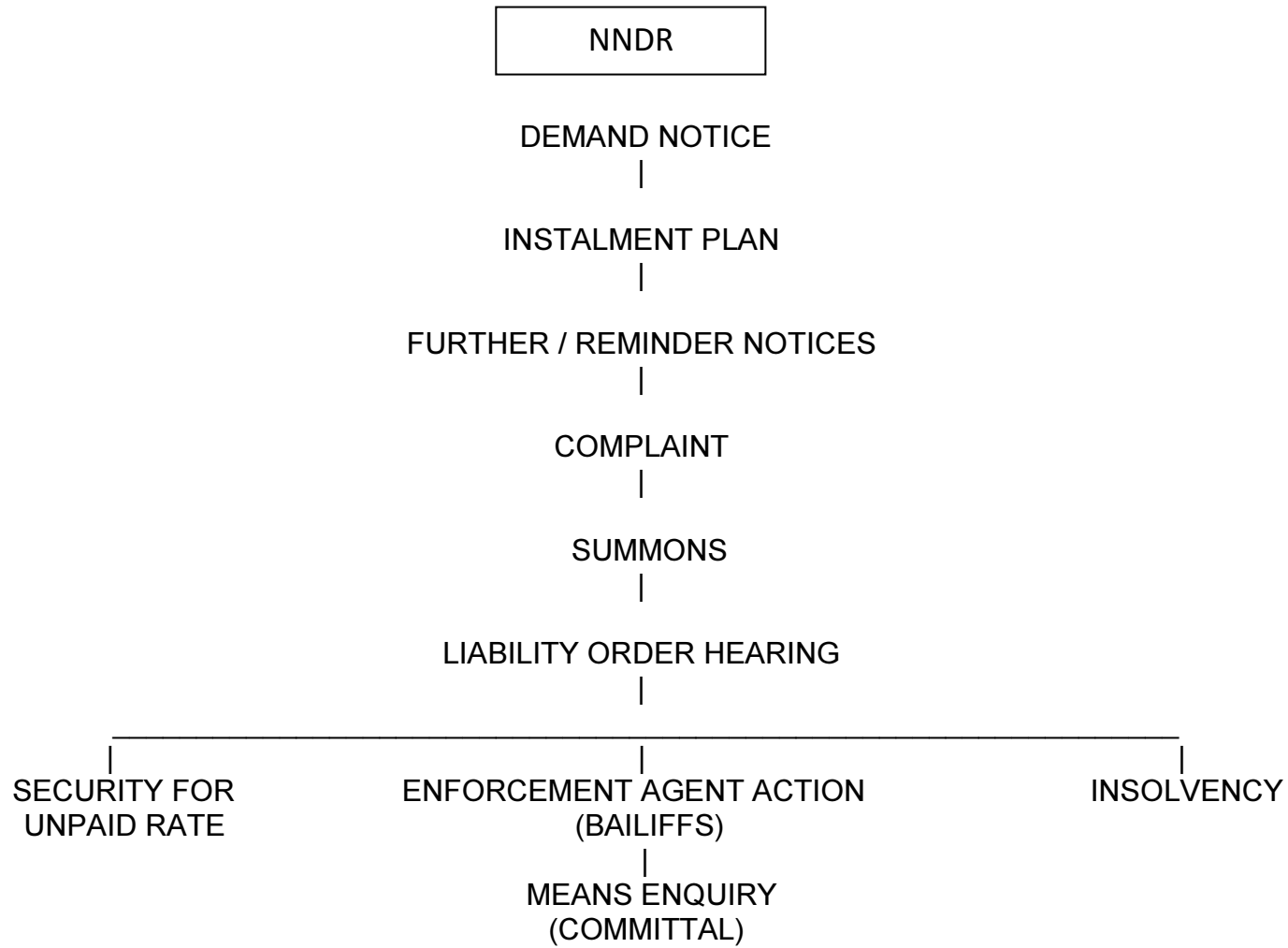
Key Objectives

- All staff will act in accordance with current legislation, regulations and within client guidelines and are trained to be courteous and professional at all times
- Bailiffs employed by the company are of professional appearance and all carry an identity card bearing a photograph, which is to be produced when they meet with a debtor.
- Where the bailiff does not meet the debtor then any documentation left at the property will be in a sealed envelope marked 'private and confidential'.
- All notices and letters issued to debtors are designed to be clear, informative and as unambiguous as possible.
- Bailiffs and staff will be alert to any cases of vulnerability and refer such cases to their bailiff manager or client where there is potential cause for concern.
- If the only person met at a property is a child (who appears to be under the age of 18), no attempt will be made to gain access to the property. If a bailiff has gained access to a property before discovering a child is present without an adult, they are instructed to withdraw.
- Care is taken when making enquiries and we attempt to be discreet but it must be understood that the Data Protection Act does not guarantee total confidentiality in all circumstances. All information is handled in accordance with the Data Protection Act
- Goods will not be removed whilst a current payment arrangement is being maintained.
- Disputes will be resolved in accordance with company procedures. Complaints may ultimately be referred to the Civil Enforcement Agency (CIVEA).

Appendix 3 – Recovery Flow Chart 1



Appendix 5 – Recovery Flow Chart 2



SANCTIONS AND PROSECUTION POLICY

HOUSING AND COUNCIL TAX BENEFIT, LOCALISED COUNCIL TAX SUPPORT AND COUNCIL TAX DISCOUNTS

Preface

This policy is for guidance only. The council will consider each case on its own merits before deciding what action, if any, to take. Alternatives to prosecution will be considered, where appropriate.

Introduction

This document provides the agreed framework for council officers involved in the investigation, sanction and prosecution of:-

- Housing Benefit (HB) and Council Tax Benefit (CTB) fraud (and associated national benefits) in accordance with the **Social Security (Local Authority Investigations and Prosecutions) Regulations 2008 (S.I.2008/463)**, the **Fraud Act 2006**, the **Theft Act 1968**, the **Proceeds of Crime Act 2002** and the **Welfare Reform Act 2012**.
- Localised Council Tax Support (LCTS) fraud (from April 2013), in accordance with **The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013**, the **Fraud Act 2006**, the **Theft Act 1968** and the **Proceeds of Crime Act 2002**.
- Council Tax Discount (CTD) fraud, in accordance with the **Council Tax (Administration and Enforcement) Regulations 1992 (S.I.1992/613)**, the **Fraud Act 2006**, the **Theft Act 1968** and the **Proceeds of Crime Act 2002**.

The council is committed to protecting the public funds it administers:-

- By making it clear to residents and landlords that they have a responsibility to provide accurate and timely information about claims for HB, CTB, LCTS and CTD;
- Through the investigation of suspected fraudulent claims;
- Through the subsequent sanctioning and prosecution of offenders.

Counter Fraud Policy Statement

The council recognises the importance of securing public confidence in the services it provides and recognises that the loss of public funds through fraud and other dishonest activity serves only to undermine this confidence.

The council acknowledges that the majority of its customers are honest; however, it also acknowledges that there are a small minority who will knowingly and/or dishonestly claim when aware they are not entitled to claim.

To this end, the council will maintain and support a dedicated fraud investigator in conjunction with the fraud team leader / partnership manager who shall have delegated responsibility for the prevention, detection, investigation and referring to a prosecuting body, cases of suspected fraud. The council will ensure that all investigations are undertaken by professional and suitably qualified staff. Furthermore, all investigations will be undertaken in a fair and proportionate manner and in accordance with stated best practice and applicable criminal and civil law.

The council commits itself to actively participating and working with other local authorities and partnership agencies to reduce the threat of fraud by active liaison, data matching, joint investigations and the joint application of sanctions and prosecutions.

Review

Each case referred to the prosecutor should be reviewed to ensure that it meets the evidential and public interest test set out in this policy and the Code for Crown Prosecutors.

The process of review is continuing and the prosecutor must take into account any change in circumstances. The prosecutor should work closely with all involved with the Fraud Investigation Officer (FIO) and the Fraud Team Leader (FTL) to reach the correct decision. The final responsibility for the decision to prosecute rests with the prosecutor.

Sanctions and Prosecution

When council staff have completed a criminal investigation, they will consider whether there is sufficient evidence to instigate criminal proceedings or offer an alternative sanction. Each case will be considered on its own merits having full regard to the requirements of the Code for Crown Prosecutors (see **Appendix** to the policy) and council policy.

Where the council is able to prove beyond all reasonable doubt that a criminal offence has occurred, in addition to recovering the overpayment, the council can:-

- Take no action;
- Administer a local authority caution;
- Invoke an administrative penalty;
- Prosecute.

Prosecution

The council will consider instituting proceedings where the 'Evidential Test' and 'Public Interest Test' detailed in the Code for Crown Prosecutors are satisfied and any one or more of the following apply:-

- The overpayment is over £2,000;
- The offence(s) have been committed over a long period of time;
- The offence(s) were planned or systematic;
- There were other persons involved in the fraud;
- The person occupied a position of trust and/or authority;
- It was not a first offence.

In addition, where employees or elected members are involved in the commission of the offence(s), then the council would consider prosecuting the offender and other persons directly involved in the offence.

Every case will be considered on its own merits and action will be considered as appropriate. It may still be considered necessary to instigate proceedings for some cases falling outside the criteria above; these include (but are not limited to):-

- An administrative penalty has been offered and either refused or has been withdrawn.
- A caution has been offered as an alternative to prosecution and is refused.

When deciding what offence an offender should be charged with, the council will select charges which:-

- Are appropriate to the offence;
- Reflect the seriousness of the offence;
- Give the court adequate sentencing powers;
- Enable the case to be presented in a clear and simple way.

The council will not charge the offender with any more offences than it considers necessary.

Administrative Penalty

Where the council has sufficient evidence to consider prosecution, it may choose to offer the offender an administrative penalty. **Section 15 Social Security Administration Act 1992** introduced the penalty against overpayments of Housing Benefit and/or Council Tax Benefit, setting the rate at 30% of the gross fraudulent overpayment of benefit. In cases where the offence has occurred wholly on / after 8th May 2012, the penalty rate will be levied at 50%.

Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Error) (England) Regulations 2013 introduced the penalty against excess payments of Council Tax Support. The penalty is set at 50% of the Council Tax Support which was paid **in excess** of that to which the person was entitled, with a minimum penalty amount of £100.

It will be considered as an alternative to prosecution in cases where:-

- There is no factor which warrants prosecution as the first option;
- There are factors which would mean that prosecution should not be considered before an administrative penalty has been offered as an alternative sanction;
- The offence(s) was not planned or systematic;
- The person has not committed a similar offence in the last 5 years;
- There was no other person involved in the fraud;
- It is possible to recover the administrative penalty.

For an administrative penalty to be offered, the following conditions must be satisfied:-

- There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
- There has been an overpayment of benefit and/or there has been an excess payment of Council Tax Support as the direct result of an act or omission on the part of the person;
- The offender must accept the administrative penalty.

That fact that an administrative penalty has been administered will be a factor when making the public interest test, should the offender commit further like offences.

An administrative penalty is offered as an alternative to prosecution. Where an administrative penalty is not accepted, or where it is initially accepted but the person later withdraws their agreement within the specified time-limits (14 and/or 28 days), unless there are exceptional circumstances, the council will instigate criminal proceedings (i.e. prosecution).

Local Authority Caution

A caution is given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. It is intended to be a meaningful penalty and deterrent for those persons where criminal proceedings are not a first option and penalty action is not appropriate. The ability to offer a caution is based on the principle that a prosecuting authority is not under any obligation to prosecute.

Where the council has sufficient evidence to consider prosecution, it may choose to offer the offender a simple caution, (known as a formal caution prior to the introduction of conditional cautions in 2005), as an alternative to prosecution, in cases where:-

- There is no factor which warrants prosecution as the first option;
- There are factors which would mean that prosecution should not be considered before a caution has been offered as an alternative sanction;
- The offence(s) were not planned or systematic;
- The person has not committed a similar offence in the last 5 years;
- The person has made a full and frank admission of the offence.
- There was no other person involved in the fraud;
- It is not in the public interests to prosecute and / or it is not feasible to recover an administrative penalty.

Before a formal caution may be offered and administered, the following conditions must be satisfied:-

- There must be evidence of the offender's guilt that is sufficient to give a realistic prospect of conviction;
- The offender must fully admit the offence to a Fraud Investigation Officer during an interview under caution or by written statement;
- The offender's previous conduct must be such that the administration of a caution is appropriate;
- The offender must understand the significance of the caution and give informed consent to receiving a formal caution.

The council may offer formal cautions by virtue of common law.

No Further Action

There may be occasions where there is sufficient evidence to provide for a realistic prospect of conviction but the personal circumstances of the offender and / or the circumstances surrounding the commissioning of the offence are so exceptional that the council will not pursue the matter further.

In this instance, the council will consider exceptional circumstances as being:-

- The personal circumstances of the offender are so exceptional (due to serious financial or health matters affecting the claimant, their partner or any dependant member of their family) that the council will take no further criminal action;
- The council has been partly culpable or has made serious failings that have contributed to the commissioning of the offence.

Whilst taking no further criminal action, the council will still seek to recover all overpaid benefit through civil law means.

Suitability of Offenders for Prosecution

When considering whether it is appropriate to instigate proceedings, the council's investigating officer will consider if there is sufficient admissible evidence to justify bringing a prosecution and if the prosecution is in the public interest.

The following paragraphs outline the factors, which will be considered, to ensure consistent and equitable treatment of those accused of fraud:-

- Financial Limits

Careful consideration will be given to commencing a prosecution where the amount of the fraudulent activity has not resulted in 'significant financial gain' to the offender (i.e. the amount of the fraudulent overpayment is less than the cost of proceedings).

Where there is no significant financial gain, a prosecution could still be considered if it is felt that the fraud was a deliberate attempt to gain money by deception (i.e. if the fraud has been discovered after a relatively short space of time and a significant financial gain has not yet occurred), or in the case of a persistent offender or any other case, where prosecution would be warranted.

An initial financial guideline figure of £2,000 has been established as the minimum amount at which the council would consider a case suitable for referring for prosecution, unless there were aggravating factors (i.e. previous history of fraud or where the offences were planned).

- Physical / Mental Factors

Consideration will be given to the defendant's mental and physical condition (including age) when deciding whether to prosecute. The investigating officer will consider whether there are significant personal or mental problems that may have contributed to the reasons for committing the offence. In addition, due consideration will be given where there is any evidence to suggest that the claimant or partner or a third party (i.e. a child) would be severely affected by the action.

- Voluntary Disclosure

It may not be appropriate to prosecute those whose disclosure of their own free will has led to the identification of a fraud of which the council was unaware. Admissions made after enquiries or an investigation had commenced do not constitute voluntary disclosure.

- Previous Incidence of Fraud

Any evidence of previous benefits-related fraudulent activity would form part of the overall 'prosecution assessment', regardless of whether any previous offences resulted in prosecution.

- Social Factors

If it is considered that the defendant's failure to declare the correct circumstances has been caused by significant extenuating social or financial factors, these would be fully evaluated. The fact that an individual was in debt or has limited assets would not in themselves meet this requirement.

- Impact on the Defendant's future ability to support themselves and / or their Family

When making the decision with regard to further action when an offence has been committed, it is prudent to consider whether the sanction action (i.e. prosecution and / or administrative penalty), would have a disproportionately detrimental effect on the defendant's future.

Consideration should be given to the impact of a criminal record on employability and / or impact of an administrative penalty on a defendant's solvency (i.e. if a customer has committed the offence as the direct result of considerable and evidenced debts, it may not be advisable for the council to then levy a financial penalty as a punishment).

If a customer has found employment after being in receipt of benefits, which would be jeopardised by a criminal record, it may not be in the public interest to prosecute the defendant if the end result is further unemployment.

- Adequacy of Evidence

Substantive evidence is essential to secure any conviction. Proceedings would not be sought if there is any doubt that the required evidence is not available. It must be clear that the fraudulent act was actually committed, that it was committed in the full knowledge of the legislation and that it was committed with the clear and deliberate intention to obtain property by deception. Satisfying the requirements of the 'Code for Crown Prosecutors Evidential' Test will ensure that evidence is of the standard required by the courts.

- Failure in Investigation

It should be evident on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the **Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996** and other relevant legislation. Particular consideration would also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

- Failure In Benefit Administration

Full account will be taken of remiss administration or fault on the part of the council or the Department of Work and Pensions (DWP) that has contributed to the processing of the fraudulent claim and subsequent award of benefit.

Post-Investigation Considerations

Once the investigating officer has completed the investigation, it will be passed to the Fraud Team Leader, who will consider each case on its merits, applying the criteria in this policy, the Code for Crown Prosecutors and any other circumstances relevant to the case.

The Council's legal team will decide whether there is sufficient evidence to provide a realistic prospect of securing a conviction and if so, whether it is in the public interest to offer a caution, offer an administrative penalty or recommend prosecution.

Authorisation of Sanction or Prosecution

The decision to offer a sanction i.e. a caution or administrative penalty, or to commence prosecution proceedings will initially be recommended by the Fraud Team Leader in conjunction with a Partnership Manager. Once agreed, this will be forwarded to the Council's legal team for approval.

Cases involving Members or employees will always be referred to the council's solicitor and the appropriate senior manager so that any standards issues can be addressed.

Cases may also be referred to the police where it is considered that the nature of the offence, or the procurement of evidence will require them to undertake or assist in the investigation. It may be necessary, on occasion, to vary the level at which sanctions or prosecution are applied in the light of particular circumstances or for operational reasons.

Loss of Benefit Provision

The 'Loss of Benefit' Provision introduced by the **Social Security Fraud Act 2001** is designed to be a deterrent against the continued abuse of the benefit system by applying a benefit sanction against those who commit benefit fraud.

The provision allows the DWP or in standard housing benefit cases, the council to apply a sanction in the form of a fixed 13 week benefit disqualification period where a person is convicted of benefit fraud in two separate proceedings, which have been committed within a five year period.

The provision was extended by the **Welfare Reform Act 2009** to include a new 4 week loss of benefit sanction for all offences of benefit fraud which result in a criminal sanction (i.e. convictions, administrative penalties and cautions).

The existing 13 week loss of benefit sanction still applies to those who have been convicted of benefit fraud in two separate proceedings, which have been committed within a five-year period. Benefits can be withdrawn (or reduced by 20% or 40%) during the disqualification period.

Proceeds of Crime Act 2003

The council will refer all suitable cases for financial investigation with a view to applying to the courts for restraint and / or confiscation of identified assets. A restraint order prevents a person from dealing with specified assets. A confiscation order enables the council's agents to seek to recover its losses from assets found to be the proceeds of crime.

Recovery of Debt

In addition to any criminal proceedings or sanction it may impose in respect of offences committed, the council will use all methods available to vigorously recover any overpayment arising from fraud; this includes taking action in the civil courts, if necessary.

Publicity

Press releases will be issued in suitable cases to seek to maximise the deterrent effect and raise the level of public fraud awareness. Consideration will be given to the amounts involved, the nature of the offence, public interest and the deterrent value of publicising a particular case.

At the end of each financial year, the council may also further publicise the numbers of formal cautions and administrative penalties successfully administered as well as the total amount of overpaid benefit identified in respect of cases investigated by the Fraud Investigation Team.

Joint Working with the DWP

The council is committed to joint working with partner organisations and in particular with the DWPs' Counter Fraud Investigation Service, the HM Revenue and Customs Special Compliance Team and counter-fraud services operated by other local authorities.

The council will liaise closely with these organisations and will undertake joint investigations and prosecutions with them. Where these organisations lead an investigation in which the council participates, the council shall, having satisfied itself of the evidential test, make the public interest test with reference to the lead organisation's Sanctions and Prosecution Policy.

Wherever practicable, the council will seek to take the same course of action as taken by the lead organisation; however, the council retains the right to take a different course of action where it believes it is in the public interest to do so.

APPENDIX

EXTRACT FROM SECTION 5 THE CODE FOR CROWN PROSECUTORS

[Crown Copyright is acknowledged]

The Full Code Test

- 4.1 The 'Full Code' Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.
- 4.2 In the vast majority of cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However, there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these rare instances, prosecutors may decide that the case should not proceed further.
- 4.3 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the 'Full Code' Test set out in this section.
- 4.4 Prosecutors must follow any guidance issued by the Director of Public Prosecutions to ensure that decisions in these cases are appropriate and correct.

The Evidential Stage

- 4.5 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 4.6 A realistic prospect of conviction is an objective test based solely upon the prosecutor's assessment of the evidence and any information that he or she has about the defence that might be put forward by the suspect. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.
- 4.7 When deciding whether there is sufficient evidence to prosecute, prosecutors must consider whether the evidence can be used and whether it is reliable.

There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. In particular, prosecutors will need to consider the following issues:-

- Can the evidence be used in court?
 - a) Is it likely that the evidence will be excluded by the court? There are legal rules that might mean that evidence which seems relevant cannot be given at a trial (i.e. is it likely that the evidence will be excluded because of the way in which it was obtained?
 - b) Is the evidence hearsay? If so, is the court likely to allow it to be presented under any of the exceptions which permit such evidence to be given in court?
 - c) Does the evidence relate to the bad character of the suspect? If so, is the court likely to allow it to be presented?

- Is the evidence reliable?
 - d) What explanation has the suspect given? Is a court likely to find it credible in the light of the evidence as a whole? Does the evidence support an innocent explanation?
 - e) Is there evidence which might support or detract from the reliability of a confession? Is its reliability affected by factors such as the suspect's level of understanding?
 - f) Is the identification of the suspect likely to be questioned? Is the evidence of his or her identity strong enough? Have the appropriate identification procedures been carried out? If not, why not? Will any failure to hold the appropriate identification procedures lead to the evidence of identification being excluded?
 - g) Are there concerns over the accuracy, reliability or credibility of the evidence of any witness?
 - h) Is there further evidence which the police or other investigators should reasonably be asked to find which may support or undermine the account of the witness?
 - i) Does any witness have any motive that may affect his or her attitude to the case?
 - j) Does any witness have a relevant previous conviction or out-of-court disposal which may affect his or her credibility?
 - k) Is there any further evidence that could be obtained that would

support the integrity of evidence already obtained?

- 4.8 Where it is considered that it would be helpful in assessing the reliability of a witness' evidence (or in better understanding complex evidence), an appropriately trained and authorised prosecutor should conduct a pre-trial interview with the witness in accordance with the relevant Code of Practice.
- 4.9 Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

The Public Interest Stage

- 4.10 In 1951, Sir Hartley Shawcross, who was then Attorney General, made the classic statement on public interest "*it has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution*". He added that there should be a prosecution: "*wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest*" (**House of Commons Debates, Volume 483, 29 January 1951**). This approach has been endorsed by Attorneys General ever since.
- 4.11 Accordingly, where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.12 A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour; or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal (see **Section 7**). The more serious the offence (or the offender's record of criminal behaviour), the more likely it is that a prosecution will be required in the public interest.
- 4.13 Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and for those factors to be put to the court for consideration when sentence is passed.
- 4.14 The absence of a factor does not necessarily mean that it should be taken as a factor tending in the opposite direction (i.e. just because the offence was not

'carried out by a group' does not transform the 'factor tending in favour of a prosecution' into a 'factor tending against prosecution'.

4.15 Some common public interest factors which should be considered when deciding on the most appropriate course of action to take are listed below. The following lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.

Some common Public Interest Factors tending in favour of Prosecution

4.16 A prosecution is more likely to be required if:-

- a) A conviction is likely to result in a significant sentence;
- b) A conviction is likely to result in an order of the court in excess of that which a prosecutor is able to secure through a conditional caution;
- c) The offence involved the use of a weapon or the threat of violence;
- d) The offence was committed against a person serving the public (i.e. a member of the emergency services, a police or prison officer, a health or social welfare professional or a provider of public transport);
- e) The offence was premeditated;
- f) The offence was carried out by a group;
- g) The offence was committed in the presence of, or in close proximity to, a child;
- h) The offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- i) The offence was committed in order to facilitate more serious offending;
- j) The victim of the offence was in a vulnerable situation and the suspect took advantage of this;
- k) There was an element of corruption of the victim in the way the offence was committed;
- l) There was a marked difference in the ages of the suspect and the victim and the suspect took advantage of this;

- m) There was a marked difference in the levels of understanding of the suspect and the victim and the suspect took advantage of this;
- n) The suspect was in a position of authority or trust and he or she took advantage of this;
- o) The suspect was a ringleader or an organiser of the offence;
- p) The suspect's previous convictions or the previous out-of-court disposals which he or she has received are relevant to the present offence;
- q) The suspect is alleged to have committed the offence in breach of an order of the court;
- r) A prosecution would have a significant positive impact on maintaining community confidence;
- s) There are grounds for believing that the offence is likely to be continued or repeated.

Some common Public Interest Factors tending against Prosecution

4.17 A prosecution is less likely to be required if:-

- a) The court is likely to impose a nominal penalty;
- b) The seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies (see **Section 7**);
- c) The suspect has been subject to any appropriate regulatory proceedings, or any punitive or relevant civil penalty which remains in place or which has been satisfactorily discharged, which adequately addresses the seriousness of the offending and any breach of trust involved;
- d) The offence was committed as a result of a genuine mistake or misunderstanding;
- e) The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgment;
- f) There has been a long delay between the offence taking place and the date of the trial, unless:-

- The offence is serious;
 - The delay has been caused wholly or in part by the suspect;
 - The offence has only recently come to light;
 - The complexity of the offence has meant that there has been a long investigation;
 - New investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified.
- g) A prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health;
- h) The suspect played a minor role in the commission of the offence;
- i) The suspect has put right the loss or harm that was caused (but a suspect must not avoid prosecution or an out-of-court disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained);
- i) The suspect is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. Prosecutors apply Home Office guidelines about how to deal with mentally disordered offenders and must balance a suspect's mental or physical ill health with the need to safeguard the public or those providing care services to such persons;
- k) A prosecution may require details to be made public that could harm sources of information, international relations or national security.