

London Borough of Merton Landlord Disclosure Policy

What can we tell landlords?

July 2020



Contents

What can we tell landlords?	3
Introduction	3
Objectives of the policy	3
What the law says	3
Consent letters	4
The Policy	5
The Principles	5
What we will not discuss	5
What we will discuss	5
1) No written consent and request to pay the landlord has been refused	5
2) No written consent and paying landlord	6
3) Written consent given - all cases	6
4) Special cases	7
5) Full disclosure	7
Summary of what we will discuss:	8

What can we tell landlords?

Introduction

Landlords regularly telephone us querying their tenant's claims.

Some landlords telephone us frequently and demand to know details about claims that could be seen as intrusive on the claimant's privacy. Disclosing the information also poses a risk to staff in a legal sense due to the restrictions under the Data Protection Act and the Human Rights Act.

Staff feel confused and uncomfortable with the amount of information they can tell landlords.

In essence we do not have to tell the landlord anything (as long as we are acting reasonably). However, we should compromise in the interests of working with landlords, and providing good customer service. This policy has been devised to address these issues.

Objectives of the policy

- To inform staff of what they should and should not discuss with landlords
- To outline possible examples where it is not appropriate to discuss private information with landlords
- To provide information to landlords regarding what we will discuss with them.

What the law says

- As a public body, we must keep information about claimants and any other person on their claim confidential.
- The Data Protection regulations say data must be kept secure, should only be processed fairly and lawfully, and should only be processed with consent.
- The Information Commissioner's website says that a person, "if asked to consent, should have a genuine and free choice".
- Section 3.2.4 of the Human Rights Act 1998 says we must respect a person's right to a private and family life.
- One of the main reasons for the introduction of Local Housing Allowance was to encourage independence, fairness, and financial inclusion for benefit claimants.

Please note that individual officers are responsible for the information they disclose. Individual officers can be subject to disciplinary action, prosecution, fine and imprisonment if they fail to adhere to the regulations.

Consent letters

Some landlords ask tenants to sign a consent letter. The tenant may give consent and if we are happy with the consent given, it is largely down to us how much information we will give out, as long as our decision is reasonable and legal. The consent forms are **not** legally binding on the Council.

Where a claimant has given consent this will apply to their details but not to any other person in the household. We must not disclose any information about those persons unless we also have *their* written consent. This includes partner of the claimant.

Many of the letters, however, are not explicit in what consent is being given and what the Council can discuss with the Landlord. Some contain phrases like:

- “disclose any information regarding my rent entitlement/decision, whatsoever, with my landlord” and
- “This means that normally the Council might tell us [*list of reasons*].....or for any other reason not mentioned here”.

These phrases are ambiguous and open to interpretation and **great care must be taken to ensure that the law is not broken when disclosing information**. For example, the claimant may give consent for Merton to “disclose any information regarding my rent entitlement/decision, whatsoever, with my landlord”. However, under the Data Protection Regulations we should not disclose any information about a third party’s income. A non-dependant, for example has not given consent to discuss their income with the landlord nor has the claimant’s partner. If all members of the household give written consent then we can disclose information about them in accordance with the policy below. NOTE: information about children can be given if requested by the parent(s).

There may be occasions where we have evidence that tenants are being forced in to doing this. The evidence must be explicit i.e. a statement by the claimant (verbally or in writing) or a person acting on behalf of the claimant. Without explicit evidence that the claimant has been forced to completing the consent form we must disclose information in accordance with this Policy.

Some letters say that the landlord will end the tenancy without serving notice if they withdraw their consent. **NOTE:** this is not permissible because although landlords can issue a notice without giving a reason for the eviction they **MUST** always serve notice in accordance with the law. Housing Advice Team has been informed where landlords have stated this and any further incidents should be referred to them.

The Policy

The Principles

1. Consent must be given by the claimant genuinely, and free of choice. If we have evidence that the tenant has been forced to sign a consent letter, we should seek consent ourselves.
2. If we believe a tenant has been harassed into signing a consent form we will notify Housing Advice Team of this and they will take action against the landlord where necessary.
3. If we have consent from the claimant we will only disclose the information outlined in this policy unless there is explicit written consent to disclose a specific piece of information, from the person the information relates to.
4. **It is critical to ensure that Merton does not breach any requirements of the Data Protection Regulations or the Human Rights Act** when informing landlords of their tenant's details.
5. Due consideration must be given to the reason a landlord is enquiring on a tenant's behalf. The tenant may have difficulty with their claim and the landlord is genuinely helping them to sort out issues. On the other hand, a landlord may be enquiring to further his or her own interests and may have coerced the tenant into signing consent.
6. If a landlord wants to know more than the information we will give out over the telephone, they should make a request in writing, giving us reasons why they need to know. We can then decide if it is reasonable to give out this information.
7. Most importantly, Merton will always act in the best interests of the claimant.

What we will not discuss

If we are not paying a landlord, we should not tell them anything about a claim, unless under the circumstances outlined below.

What we will discuss

No written consent and:

1) request to pay the landlord has been refused

- a) If do not have written consent to discuss the claim with the landlord but the landlord has requested direct payments to be made to them and we have refused this request, we can tell them:

that we have refused it and the reasons why

but not

the details of the claimant's circumstances.

2) paying landlord

a) If we **do not have** written consent to discuss the claim but are paying the landlord we can tell the landlord about:

- ✓ the amount, frequency and period of the payments made to them
- ✓ details of any overpayment being recovered from the landlord
- ✓ the general reason for the overpayment. For example we can tell them the claimant had a change of circumstance

but not

- ✗ the reason for the change e.g. claimant started work/increase income/where they moved to etc.

3) Written consent given - all cases

a) If **written consent** to disclose information to a landlord is given freely, Merton will inform **all** landlords, the following:

i) Whether any requests for further information have been made

- ✓ We can inform them for example that we have asked for proof of savings

but not

- ✗ the type of savings e.g. Barclays Bank account 123456;

ii) The date of the claim and any entitlement periods

- ✓ We can inform the landlord the date that the claim will be or has been paid from and the date it has been paid to.
- ✓ We can also inform them of periods where HB is not being paid and the reason

but not

- ✗ the details regarding why the period was not paid. For example, a landlord may ask why we have not paid for a period and the reason is that the claimant's income was too high. We can tell them the income is too high but not how much the income is.

iii) The decision on backdating a claim

- ✓ We can also inform the landlord of any period that has been backdated or not

but not

- ✗ the details for backdating. Where we have decided not to back date, Landlords should be informed that the claimant did not give "good cause".

iv) The amount of HB paid or to be paid

- We can inform the landlord of the amount of HB paid or to be paid

v) The number of people in the household (but not the details of their income, capital or savings)

- We can inform the Landlord about the number of people in the person's household. We will not however discuss the income savings or capital of those living with the claimant.

vi) Any deductions from the HB entitlement and what they are for

- We will inform the landlord if any deductions are being made from the HB payments, how much they are and what they are for (e.g. non-dependant deductions or claw-back on overpayments.

but not

- the details of the deduction. For example, we will not disclose the income of a non-dependant or the reasons for the overpayment.

vii) Any appeals or reconsiderations that have been entered and the decisions made from them

- We will inform a landlord if the claimant has asked us to look at a decision again or lodged an Appeal.

but not

- any personal details regarding the request or appeal.

4) Special cases

- a) Where we have written consent to do so we will also discuss the following with landlords that we decide are providing some kind of support to their tenants in managing their affairs:

- The details of any of the points shown in the summary above, except the income, savings and capital of any non dependant living with the claimant.

but not:

- The details of the income, savings and capital of any non dependant living with the claimant unless the non dependant or partner has given consent in writing

5) Full disclosure

- Where claims have been made through Registered Social Landlords taking part in the RSL VF scheme we will give full information regarding the claim, including the non-dependant details. This is because by making their claim through the RSL the claimant has already disclosed this information to the RSL.
- Where an individual has given written consent to disclose a specific piece of information to the landlord then we will do this. For example, if a non-dependant gives written consent to disclose their earnings to the landlord then we will do this, however, if the claimant gives consent and not the non-dependant we will not. The consent given must be explicit and from the individual to whom the information relates.

Summary of what we will discuss:

1. **No written consent - payment to landlord refused** - If there is no written consent and we do not pay any HB to the landlord because a request to pay them directly has been refused under the Safeguard policy
 - ☑ The reason for the decision
2. **No written consent – payments to landlord** - Where payments are made to the landlord and no written consent exists we will only disclose:
 - ☑ **Details of the payments made**
 - ☑ **Any overpayments being recovered from the landlord but not the full reason for the overpayment.**
3. **Written consent** - Merton will check which individuals have given their consent before disclosing the information below to landlords:
 - ☑ **Whether any requests for further information have been made, the type of information requested but not the details of the information we have requested**
 - ☑ **The date of the claim and any entitlement periods**
 - ☑ **The decision on backdating a claim but not the details of why the claim has been backdated or not**
 - ☑ **The amount of HB paid or to be paid**
 - ☑ **The number of people in the household but not the details of their income, capital or savings**
 - ☑ **Any deductions from the HB entitlement and what they are for but not the details of the reasons for the level of the deduction**
 - ☑ **Any appeals or reconsiderations that have been entered and the decisions made from them but not any personal details regarding the appeal or reconsideration**
4. **Special Cases** - where it is recognised the landlord is providing support to the claimant we will disclose
 - ☑ **the details of any of the points above except for the income, savings and capital of any non-dependant living with the claimant.**
5. **Full disclosure** - Where claims have been made through RSLs who are part of the RSL VF scheme we will disclose:
 - ☑ **All information about the claim - including income, savings, and capital of partners and non-dependants. This is because this information will already be known to the RSL who verified the claim in the first place.**

Contact for Data Protection and Freedom of Information enquiries:

Information Governance Manager
Merton Civic Centre
London Road
MORDEN
SM4 5DX

E mail: data.protection@merton.gov.uk

Contact for general HB/LHA enquires:

Merton Benefits Service
PO Box 610
London Road
MORDEN
SM4 5ZT

Tel: 020 274 4903

E mail: Housing.Benefits@merton.gov.uk