

London Borough of Merton Local Housing Allowance Safeguard Policy

April 2011



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Department of Work and Pensions (DWP) guidance

The DWP have introduced the requirements for Housing Benefit (HB) for Local Housing Allowance (LHA) cases to be paid directly to the tenant. Part of the reasoning behind this is to encourage financial responsibility and inclusion for benefit claimants.

As part of this intention HB for LHA cases **must** be paid directly to tenants - unless certain factors exist. Decision makers in the Benefits Office can decide to pay a landlord direct on receipt of a request or representations for payments direct to the landlord.

A temporary safeguard measure is in place from 1st April 2011 enabling payment direct to the landlord where we consider that it will assist the tenant in securing or retaining a tenancy. For a tenancy to be secured or retained it is implicit that the rent should be affordable to the tenant.

Objectives of this policy

Direct payment to landlords will serve as a **safeguard** to ensure that rent is paid on time and the claimant and his family can continue to maintain their home.

This policy incorporates existing HB regulations relating to making payments to landlords when it is a first payment and due to arrears, in addition to the DWP Guidance on Safeguarding tenancies under the LHA rules introduced in 2008.

This policy is a set of guiding principles designed help the Benefits Office make decisions about making HB payments directly to the landlord. There is no blanket policy and each request for direct payment will be treated on individual circumstances. This document provides some guidance for decision makers when deciding whether to pay a landlord instead of a tenant. The guidance is not exhaustive and decision makers must come to their own conclusions regarding this matter. Ultimately, the policy and the resulting decision must achieve the following:

- Provide a safeguard for the most vulnerable tenants and reassure them that their rent will be paid;
- Prevent rent arrears and tenants being put at risk of eviction;
- Help sustain tenancies for vulnerable tenants;
- Reassure landlords that their rent will be paid if they rent properties out to vulnerable tenants;
- Assist tenants to contact other advice agencies where necessary and give people the opportunity to manage their own financial affairs;
- To make reasonable, fair and consistent decisions;
- To promote a transparent and simple process that is understood widely;
- To treat each case individually and not make assumptions.
- Provide guidance for the temporary direct payments introduced by the Government in April 2011.

The policy is not designed to;

- Undermine support that is being received to allow tenants the opportunity to be responsible tenants and control their own income and expenditure;
- Be used by landlords to circumvent the aims of LHA;
- Be a blanket policy for agencies providing support to tenants.

What this policy covers

The policy is split into 4 parts:

Part 1 - Making the first HB payment to the landlord - is an existing policy which has been part of HB regulations for many years. This has now been incorporated in the Safeguarding Policy from April 2011. It is broadly discretionary and this policy provides guidance for the HB Office.

Part 2 - Direct payments due to 8 weeks arrears - is an existing policy which has been part of HB Regulations for many years. This has now been incorporated in the Safeguarding Policy from April 2011. It is mandatory and this policy provides instructions for the HB Office.

Part 3 - Vulnerable tenants - those that can't pay or won't pay - covers the directive issued by the Government in 2008 with the introduction of LHA. It is broadly discretionary and this policy provides guidance for the HB Office.

Part 4 - Securing or retaining an affordable tenancy - covers the new temporary directive introduced by the Government from April 2011. It is broadly discretionary and this policy provides guidance for the HB Office.

Decision making

Housing Benefit Team Managers and Senior Benefit Officers are authorised to make decisions regarding making direct payment to landlord. These are known in this guidance as decision makers.

When making a decision whether to pay HB directly to the landlord, decision makers should only consider facts that are relevant to the criterion later in this sector. Any irrelevant facts must be ignored.

Notifying affected parties

The Benefits Office have a duty to notify affected parties of any decision about paying landlords direct.

Part 1 - Making the first payment to a landlord

The HB Regulations allows Merton to make the first payment to the landlord after a decision or a change of circumstances. This provision is not mandatory i.e. the first payment does not have to be made to the landlord.

Guidance on this is contained in paragraphs 6.163-166 of the [DWP Guidance Manual](#) and paragraphs 4.080-081 of the [LHA Guidance manual](#)

Policy intention

The policy applies only to the first payment. Any regular payments after this can be considered for direct payment under the conditions set out in Parts 2-4 of this policy.

This policy intended to avoid the possibility of a claimant misusing a first payment covering several weeks' entitlement. The policy does not make any assumptions about whether a tenant will misuse the first payment. Most claimants will use the payment to pay the rent; however, we will consider making the first payment to the landlord if we have reason to believe a claimant will not pay their rent with the first payment.

Conditions for making first payment to the landlord

The first payment can be made to the landlord if, in our opinion:

- the tenant has not already paid rent for the period covered by the payment, and
- it would be in the interest of the efficient administration of HB because of our duty to safeguard the public purse by reducing opportunities for fraud or abuse

We will consider making a cheque or direct credit payment to the landlord when

- the tenant has recently moved to the property and does not yet have a track record of paying rent to the landlord so as to safeguard the tenancy, or
- a substantial amount of HB is owing to the tenant - we do not need to know whether the claimant is in arrears or not.

Making the first payment to the landlord may be appropriate if

- ❑ the amount due is substantial, or
- ❑ we have reason to think the claimant might default, perhaps because a previous landlord has reported non payment, or
- ❑ there is a rent debt but the case is not appropriate for longer term direct payment arrangements under [Part 2](#), [Part 3](#) or [Part 4](#) of this policy. If direct payments are appropriate, all payments - both first and regular will be paid to the landlord.

Making the first payment will not be appropriate if

- there is evidence the claimant has paid some or all of the rent for the period in question
- either the HB due or the rent debt is small.

Definitions

Substantial arrears of HB

The term “substantial” is not defined by the DWP. Each case will be considered on a case by case basis. The HB Guidance manual suggests “several weeks rent” as a benchmark however, this is not a rule.

Identifying first payments to the landlord

Benefits Officers will check cases when they award benefit and consider making the first payment to the landlord.

Most payments over £1500 are checked by an officer and first payment cases may also be identified in this way.

Our opinion about whether the claimant has fully met their rental liability will be based on information held by us at the time of dealing with the claim. We are not required to make special enquiries for example, to establish from the landlord or specifically of the claimant whether the rental liability for the period in question has been discharged. However, we will contact tenants where we believe the first payment should go to the landlord to discuss the issue.

Requesting first payment to the landlord

A formal request does not have to be made for this provision to be used. Tenants and landlords may request this provision as part of the claim application; however, this is not a requirement.

Data protection issues

Unlike the circumstances in Parts 2-4, decisions about the first payment will most likely be made without a request from a tenant or landlord.

There will be circumstances where tenants have stated that they do not want their landlord to know that they are claiming HB and will not have told the landlord this fact. There will also be some who have said they do not want us to discuss their claim with the landlord.

In these circumstances Benefits Officers will address this issue when they contact the tenant to discuss the first payment and why they believe it should go to the landlord. If the claimant does not respond or does not give permission to contact the landlord because they do not want the landlord to know they are claiming HB we will not make the payment directly to the landlord.

Benefits Officers will not disclose the fact that a tenant is claiming HB by approaching the landlord without the tenant's permission. Where a landlord is already aware that the tenant is claiming we will disclose or contact them under the terms of the Disclosure Policy. The maximum details we will disclose to the landlord in these circumstances will be very general and only relate to the first payment.

Decision making for first payment to landlord

Benefits Officers will look at:

- **Data protection issues** to ensure we are able to make payment to the landlord without compromising the tenant;
- The amount of the first payment and how much rent this represents - to decide if this is **substantial**;
- Whether there is evidence that the claimant has absconded with arrears in the past;
- Whether there is evidence that the rent for this period has already been paid;
- Whether it is it would be in the interest of the efficient administration of HB to make the first payment of HB to the landlord.

Notifying affected parties

- Where we do *not* make the first payment directly to the landlord, as part of the normal claims assessment (i.e. *without* a request from the landlord or claimant), we will not write to the landlord and claimant as the first payment has not been requested, it is only being considered as part of the normal claims assessment process.
- Where we *do* make a make decision to make the first payment directly to the landlord, as part of the normal claims assessment (i.e. without a request from the landlord or claimant), we will write to the landlord and claimant to tell them of our decision and their appeal rights (see below). It should be noted that first payments will not be delayed and therefore appeals are likely to be made after the first payment has been made, however, we will have contacted both parties to discuss the issue and they will be aware of the decision before the payment is made.
- If a landlord or tenant has requested the first payment to go to the landlord we will we will write to the landlord and claimant to tell us of our decision and their appeal rights even if we decide *not* to pay. It should be noted that first payments will not be delayed and therefore appeals are likely to be made after the first payment has been made, however, we will have contacted both parties to discuss the issue and they will be aware of the decision before the payment is made.

Appeal rights

Any person affected by the decision to whether to pay the first payment to the landlord has the right of appeal under the usual arrangements. If a person wishes to appeal they can:

- Request an explanation of the decision
- Request that we look at the decision again - if the Request form has not already been filled in at this point decision makers should send the form straightaway.
- Request an appeal to the Tribunal Service - as part of the appeals process decision makers should look at the decision again. If the Request form has not already been filled in at this point they should send the form straightaway.

It should be noted however, that the first payment will not be delayed pending an appeal by a landlord and if the decision making process has been made in the correct manner prescribed above the decision is unlikely to be overturned. In these cases it is likely that the first payment will already have been made and the HB will not be paid for a second time.

Part 2 - Eight week rule - claimant in arrears

The Housing Benefit regulations state that where a tenant is more than 8 weeks in arrears HB MUST be paid to the landlord. We are not required to check if the tenant is in arrears before deciding to pay the tenant. If a tenant is already in arrears and we have not been informed of this, Merton is not liable for any losses incurred.

Policy intention

The policy is intended to prevent further arrears accruing and to minimize the risk that a tenant could lose their home.

Conditions of the provision to pay 8 weeks in arrears

Any tenant who is more than 8 weeks in arrears will have their HB paid directly to the landlord. This applies to all tenants including those getting HB outside of the LHA rules. Even where eight weeks or more arrears are owed, direct payments to landlord are not mandatory if it is not in the tenant's overriding interests to make them.

Definitions

8 weeks arrears

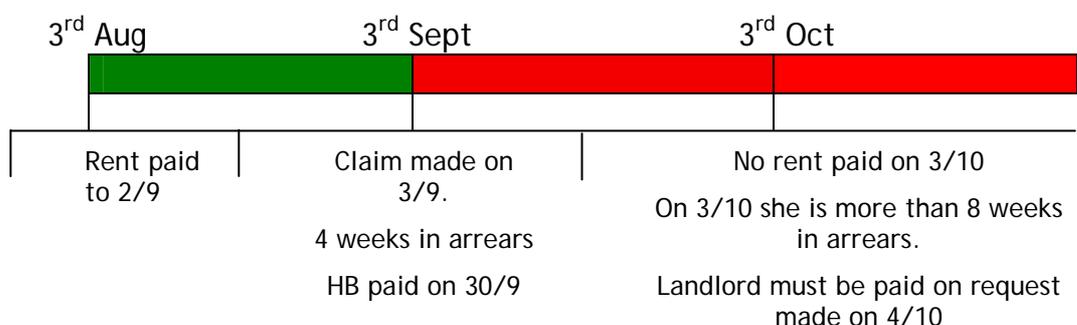
Arrears of 8 weeks include rent in advance that has not been paid. The following gives an example where this is the case:

Miss S has a tenancy where the rent is due every month in advance on the 3rd of the month. She paid her rent on 3rd August to 2nd September. Miss S is made redundant on 1st September and cannot pay her rent on 3rd September.

Miss S makes a claim on 3rd September. Her claim is assessed and she is already one month in arrears at this stage. As she will be paid £600 it is decided this is not

substantial arrears and there is no evidence that she is vulnerable, so the HB can be paid to her on 30th September.

On 3rd October she does not pay her rent up from 3rd Sept to 2nd October nor does she pay to 2nd November, so her landlord fills in a form to request direct payments on 4th October. As her rent up to the 2nd November is already due but has not been paid, she is in arrears from 3rd September to 2nd November. As this is more than 8 weeks in arrears we MUST pay the landlord direct.



Identifying cases where tenant's are 8 weeks in arrears

The duty to pay a landlord/agent only arises if the landlord/agent (or someone else) informs us that there are eight weeks' or more arrears. It is not up to the Merton to find this out for itself.

Once we have been notified of the arrears we will:

- suspend payments, and
- ask the landlord to formally request direct payments and
- investigate the arrears.

Requesting direct payments due to arrears of 8 weeks

Landlords can phone Merton to tell us their tenant is in arrears. On that phone call we will suspend payments and ask for a formal request to make direct payments. Landlords can formally request direct payments due arrears by filling in the on-line form at www.merton.gov.uk/payment_hbprivate

This form will be automatically e mailed to the HB Office for immediate action.

Data protection issues

As the request to make direct payment to landlord will usually be made by the landlord, they will be aware that the tenant is probably on HB.

In these circumstances Benefits Officers will discuss the arrears with the landlord even if the tenant has not given permission to discuss the claim. HB Officers will have due regard to the Disclosure policy when talking to landlords about the arrears. In general terms they will only discuss:

- the arrangements for paying the arrears,

- the amount that will be paid and
- advise the landlord what they need to do to request the payments.

They will not discuss personal information about the household of the tenant.

Decision making

When informed of arrears the Benefits Officers will:

- suspend the payments on the HB claim;
- contact the claimant, by telephone where possible, and find out why the rent has not been paid.
- If there is no apparent reason for 8 weeks of rent arrears then Benefits Officers will make direct payment to landlord.
- If the tenant disagrees with this and can satisfy the Benefits Office that the rent has been paid, we will continue to pay the rent to the tenant. The reasons for this will be recorded.
- If the tenant is in arrears but for less than 8 weeks, the Benefits Officer will look at whether HB has already been paid and not paid to the landlord and what the likelihood is of the arrears reaching 8 weeks. They will either:
 - decide to pay the landlord directly under the Safeguard Guidance in [Part 4](#) of this Policy, because they believe they are unlikely to pay the rent with the HB.
 or
 - continue to pay the tenant and make a referral to help or advice services before the arrears reach the eight-week point. In this situation Benefits Officers should inform the landlord that they should monitor the situation and contact us again if the rent is not paid.

Tenant/landlord disputes

Where the tenant indicates a dispute with the landlord about repairs or works to be done to the accommodation, we will make payments to the landlord. This is because 8 weeks of rent should be more than adequate to take remedial action on any problems with the property.

If the tenant can prove that the cost of any repairs or works to be done cost more than the 8 weeks they have retained, we will withhold payment of HB until either:

- the amount disputed has accrued or
- the dispute is resolved.

The tenant will be required to supply builder's estimates or bills, letters from Environmental Officers or letters from solicitors in support of this. Merton never advises claimants to withhold their rent regardless of the circumstances. If the claimant states that they are doing so due to a dispute, officers will check whether they have sought legal advice and

are keeping the rent to one side such as in a separate bank account or with an independent third party.

If the dispute is about anything other than the cost of repair to the property we will pay the landlord if they are 8 weeks in arrears.

Claimant no longer in arrears of 8 weeks

This rule applies as long as the claimant is more than 8 weeks in arrears. Once the claimant is no longer 8 weeks in arrears the rule no longer applies and we must consider who to make the regular HB payments to under [Part 3](#) and [Part 4](#).

Notifying affected parties

Most decisions to pay the landlord directly due to arrears will be made with a request from a landlord. The provision is mandatory and we must make a decision to pay the landlord directly on every case where a request is made. The landlord and claimant are affected parties and must be notified, in writing, of the decision to pay and be granted appeal rights (see below).

Appeal rights

Any person affected by the decision to whether to pay the landlord due to arrears has the right of appeal under the usual arrangements. If a person wishes to appeal they can:

- Request an explanation of the decision
- Request that we look at the decision again - if the Request form has not already been filled in at this point decision makers should send the form straightaway.
- Request an appeal to the Tribunal Service - as part of the appeals process decision makers should look at the decision again. If the Request form has not already been filled in at this point they should send the form straightaway.

A landlord can appeal against a decision on direct payment to landlord even if they did not request the direct payment. There is no definitive guidance from DWP about whether a landlord is a person affected in these circumstances, however, Merton will accept an appeal from a landlord and The Tribunal Service will make the decision whether they can hear a landlord's appeal.

Part 3 - Vulnerable tenants (can't pay, won't pay)

Policy intention

The safeguard provision for vulnerable is designed to:

- prevent vulnerable tenants falling into arrears because there is evidence that they:
 - are unable to manage their financial affairs or
 - will not pay their rent if the HB is paid to them

Conditions of the safeguard

For this safeguard to apply there must be evidence that the tenant falls into either of the categories above. There are 3 main factors to consider and these are covered later in this part. They are:

1. Is the tenant:
 - likely to have difficulty in paying their rent (**can't** pay)? OR
 - likely to fail to pay their rent (**won't** pay)?
2. Is it in the tenant's best interests to pay the landlord?
3. Could the tenant overcome the issues in 1. if they received support and guidance to manage their?

See the [Decision making - direct payments for vulnerable tenants](#) section.

Identifying direct payment cases for vulnerable tenants

Claimants, or persons acting on their behalf, may make requests or representations to have direct payments to landlords. See [Who can make the request](#).

If front-line staff members believe there may be a case for the claimant to request direct payment then this can be advised at the time the claimant is being seen at Merton Link. Merton decision makers would **not** normally write to suggest this.

Decision makers may also take into account information that is already held within Merton **without** the need for a formal request or representation by the claimant. This may, for example, include information passed on by social services or Housing departments, which suggests that a claimant is unlikely to pay their rent. These requests or representations will normally require some investigation. See [The investigation process](#).

Requests for direct payment to landlord for vulnerable tenants

How requests should be made

Requests for direct payment to landlord for vulnerable tenants, should ideally be made in writing giving reasons for the request and provide supporting evidence. This can be done in the following ways:

- The HB application form has a section that enables claimants and their representatives to request direct payment to landlord. See section 17 on HB Application form.

- A request form shown in Appendix 1.
- Online at www.merton.gov.uk/hbctb/benefitforms
- A written request in any other format

It should be noted that the representations do not have to be in writing however; it is unlikely for the Benefits Office to make a decision without some sort of written representation, evidence or information.

Who can make the request?

Claimants or their representatives

- Representatives may include:
 - Family or friends;
 - GP/Doctor
 - Probation Officer

Other sources

- Requests from other sources suggesting the claimant “can’t” or “won’t” pay their rent - such as:
 1. Landlords and their agents - see **Note** below;
 2. Housing Needs Team;
 3. Housing Solutions;
 4. Housing Advice Team;
 5. Welfare Benefits Team;
 6. Social Workers;
 7. DWP
 8. CAB
 9. Supporting People Team

Note:

A landlord may request a payment direct because they believe their tenant either “won’t” or “can’t” pay. They could in theory make this request without the knowledge of the tenant. When making a decision in these circumstances decision makers must take account of the evidence that the landlord presents as part of the request. See **Evidence evaluation**.

Decision makers should inform a claimant that their landlord has requested direct payment to them, the reasons why the landlord believes they “can’t” or “won’t” pay the rent and the evidence supplied. They should also be given the opportunity to disagree with the landlord’s request. Also see the **Part 2 - Direct payment to landlord when the claimant is eight weeks in arrears**.

Decision making - direct payments for vulnerable tenants

In making a decision whether to pay direct to a landlord for a vulnerable tenants there are three main factors to consider:

1. Is the claimant

? likely to have difficulty in paying their rent (**can't** pay)? OR

? unlikely to pay their rent (**won't** pay)?

If they are, decision makers may decide that it is appropriate to make direct payment to landlord.

When deciding whether the claimant "**can't**" or "**won't**" pay the following needs to be considered:

- Is there evidence of the following (these conditions may have been indicated on the Part 17 of the HB form or Part 6 of the Change of Address form)?
 - Learning or physical disabilities
 - Medical conditions, including mental health problems*
 - Illiteracy or inability to speak English*
 - Addiction to drugs, alcohol or gambling*
 - People fleeing domestic violence/care leavers/people leaving prison*
 - People who have obtained a private tenancy with assistance from a local housing authority (an LA assisted tenancy)

* *these may involve a temporary condition that will mean short term direct payment to landlord until the claimant is able to manage their affairs. Decision makers may consider a shorter review for these types of conditions.*

See **Evidence evaluation** for details of the evidence requirements.

- Is there evidence that they have a history of being unable to manage their financial affairs? This may include:
 - Severe debt problems/C.C.Js;
 - Undischarged bankruptcy;
 - Inability to obtain a bank account including a basic bank account;
 - DWP attachment of benefits in respect of housing costs;
 - Being in receipt of Supporting People help or help from a homeless charity;
 - A history of absconding without paying their rent.

See **Evidence evaluation** for details of the evidence requirements.

- Is the inability to provide evidence or their failure to co-operate in the investigation indicative of the claimant's inability to manage their affairs?

Where no response is received to a request for evidence, even after referral to an advice agency, consider the request in light of the information received.

2. Is it in the interests of the claimant to make direct payment to landlord? In most cases, it is in the long-term interests of the claimant to manage their own affairs and

make their own payments of rent. However, certain individuals may simply not be able to do this reliably.

3. Could the claimant pay their rent themselves with appropriate help and support? Many claimants, who might otherwise have difficulty in managing their own financial affairs, may be able to do so if given initial help. In these cases, decision makers should consider referring the claimant to advice agencies, whether internal or external, for help. However, decision makers should not automatically decide against direct payment to landlord simply because help or advice has been suggested.

Ultimately, decision makers should make a decision based on what is in the best interests of the claimant (not the landlord), and that most claimants will benefit from paying rent for themselves. This may involve interviewing the claimant or visiting them in their home.

When direct payments should not be made to a landlord

Direct payments to landlords should *not* be made in the following circumstances:

- The claimant has an appointed person acting on their behalf. An appointed person is one that has been recognised and acting on the claimant's behalf because they cannot act for themselves. An appointed person is a person officially appointed by a claimant to act on their behalf NOT a person nominated by the claimant to help out; or
- Direct payment to landlords would counter act the support being given to tenants to help them take financial responsibility; or
- Where the landlord is unable to manage their financial affairs (very unlikely)

Timescales

The decision making process should take no longer than 8 weeks to complete and the process will only extend to this length of time if investigation needs to be made into the information and evidence.

Summary of the decision making process

1. When a written request is received the Benefits Officer will set the claim to pay directly to the landlord for an interim period of up to eight weeks. See separate Direct Payment Procedures for this process.
2. Decision makers will make an initial assessment (within 14 days, or before the first payment is made whichever is the sooner) whether there is enough information and evidence to make a decision regarding direct payment to landlord. This may take some investigation into the evidence supplied.
3. If there *is* enough information and evidence at this point, the Decision Maker will make their decision whether to make direct payment to landlord or not and notify the affected parties.

Where possible the decision regarding direct payment to the landlord will be made before or at the same time as the assessment of HB.

4. If there is not enough information, the Decision Maker will then either:

- send a Request form [Appendix 1](#)) to the requesting party and ask them to complete it and return to the HB Office, within one month; OR
 - request further evidence to support the information given and to return it to the HB Office, within one month.
5. Once the information and evidence is received the Benefits Office will investigate the evidence and make a decision.

The investigation process for direct payment for vulnerable tenants

Payments whilst investigations are conducted

Whilst investigations are being made a decision will need to be made about whom to pay the HB to as an interim measure. Payment of HB **must not** be delayed whilst making a decision about direct payment to landlord.

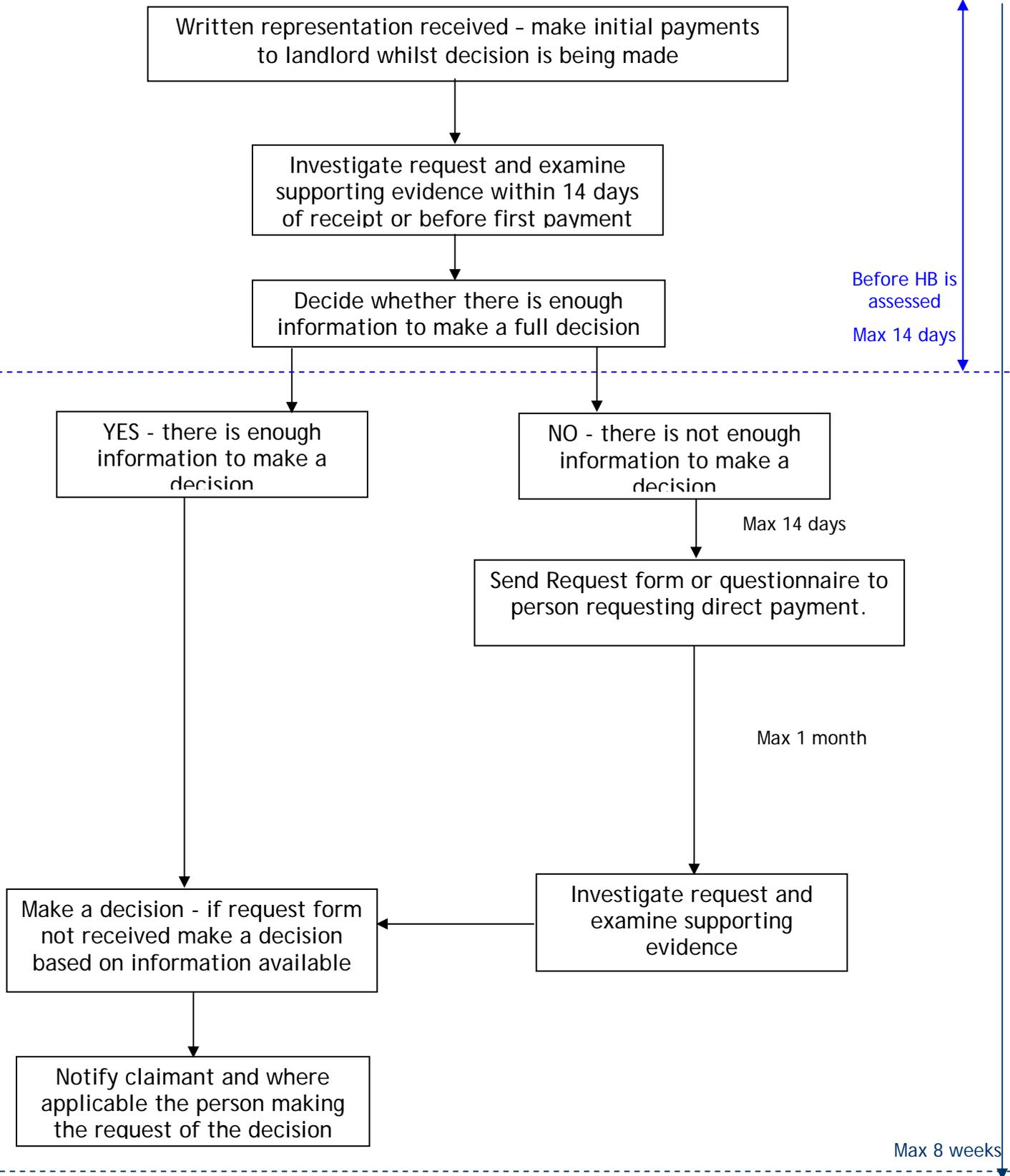
During the investigation period, HB payments can be paid to:

- The claimant - this may give a benchmark as to their ability to manage their affairs; OR
- The landlord for a **MAXIMUM** of 8 weeks whilst the request for direct payment to landlord is considered. Generally speaking this would be the preferred option if a claimant requests direct payment to the landlord.

The general policy is to pay the landlord initially, unless the evidence is suspect or not persuasive. If the evidence appears to be from or driven by the landlord to get direct payment, pay the claimant.

The decision about who to pay during the investigation period is not open to appeal.

Flowchart of investigation process



Data Protection

Merton must ensure it has the claimant's consent to approach individuals or organisations for information, unless there is an established legislative gateway permitting the information to be disclosed to Merton. Merton should also ensure that it obtains, or retains, only such information as is necessary for it to make its decision.

Evidence evaluation

Normally decision makers will need to investigate each request for direct payment to landlord by looking at supporting written evidence supplied. Decision makers should aim to interview claimants if they have not given satisfactory written evidence to support their request.

Weight of evidence

Decision makers can make a decision, **without** evidence or further investigation, based on a referral or request from the following:

- Social Services
- GP
- DWP
- Banks and building societies

Where we receive a request or representation to make payments direct to the landlord and it is supported by evidence from the following, decision makers should **normally** take this evidence at face value:

- Housing Needs Team;
- Housing Solutions;
- Housing Advice Team;
- Welfare Benefits Team;
- Social Workers;
- DWP;
- Citizen's Advice Bureaux;
- Supporting People Team - evidence from SPT is persuasive but care must be taken when the support is designed to aid the client to manage his or her own finances.

If evidence from any of the above is not supplied

Decision makers would not normally make a decision to pay direct on the basis of a request from the claimant, family/friends or landlord alone. The request would need to be backed up by evidence from the above agencies - preferably written. Where no evidence from the above agencies is supplied to support the request for payment direct to the landlord:

- carefully evaluate evidence from the claimant, their family/friends or landlords;
- consider whether the lack of any supporting evidence means that the need for direct payment to landlord does not exist;

- consider referral to an advice agency to assist in obtaining the evidence;
- evaluate the information that has been requested and the effort that the claimant has made in obtaining the evidence;
- consider whether it is in the best interests of the claimant to pay direct;
- landlord evidence alone (or together with the claimant) should not be regarded as sufficient and further evidence should be sought. When evaluating requests and evidence from landlords, decision makers should consider factors such as
 - ❑ Does the individual landlord already receive direct payments in respect of other tenants?
 - ❑ Has the landlord shown that he has tried to recover the missing payments from the claimant?
 - ❑ Does it appear that pressure has been brought to bear on the claimant to present their circumstances in a particular light?
- Where the landlord has requested direct payment without the claimant's knowledge or co-operation decision makers should contact the claimant to ensure that they are aware that this request has been made, the reasons given by the landlord for believing the claimant "can't" or "won't" pay.

Failure to provide *any* supporting evidence

An inability to provide supporting evidence will need careful evaluation. On the one hand, it might indicate that the need for direct payment to landlord does not, in fact, exist. On the other, it could of itself provide the evidence that the claimant has difficulty managing his or her own affairs. When evaluating a lack of supporting evidence, decision makers should consider what information the claimant has been asked to produce and the efforts that they have made to produce it. If decision-making staff in Merton is in any doubt, they should consider referring the claimant to an independent adviser for further help.

Fit and proper test

Local authorities are not obliged to make direct payment to landlord where they are not satisfied that the landlord is a "fit and proper person to be the recipient of a payment of rent allowance". This will apply even when the criteria for a direct payment to the landlord would otherwise have been met.

A landlord may not be a "fit and proper person" where it is proven that they have engaged in financial impropriety. This should normally include an element of impropriety relating to Housing Benefit such as fraud or knowingly failing to declare changes in circumstances affecting the payment of benefit. Local authorities may choose to consider other areas, such as failure to pay Council Tax or business rates, but generally the lesser connection that the offence or impropriety has with Housing Benefit, the less relevant it will be.

If decision makers believe that a landlord is not a "fit and proper person" they may still make direct payments to them if they believe that it is in the overwhelming interest of the claimant to do so and that they risk eviction if direct payment to landlord are not made.

Excess payments

Under LHA rules, before 1st April 2011, the claimant is entitled to the applicable LHA rate, regardless of the contractual rent. If the contractual rent is lower than the LHA rate the claimant is able to keep up to £15 of the excess for his or her own use. When making decisions about making direct payments, decision makers should ensure that this excess payment is paid to the claimant and not the landlord.

Excess payments will not be made after 31st March 2012 as these will stop at the LHA anniversary date.

Notifying affected parties

Most decisions to pay the landlord directly for vulnerable tenants will be made with a request from a landlord. We must make a decision to pay the landlord directly on every case where a request is made. The landlord and claimant are affected parties and must be notified, in writing, of the decision to pay and be granted appeal rights (see below).

Appeal rights

Any person affected by the decision to whether to pay the landlord has the right of appeal under the usual arrangements. If a person wishes to appeal they can:

- Request an explanation of the decision
- Request that we look at the decision again - if the Request form has not already been filled in at this point decision makers should send the form straightaway.
- Request an appeal to the Tribunal Service - as part of the appeals process decision makers should look at the decision again. If the Request form has not already been filled in at this point they should send the form straightaway.

A landlord can appeal against a decision on direct payment to landlord even if they did not request the direct payment. There is no definitive guidance from DWP about whether a landlord is a person affected in these circumstances, however, Merton will accept an appeal from a landlord and The Tribunal Service will make the decision whether they can hear a landlord's appeal.

Reviewing a decision

There are two types of review that decision makers may undertake

1. on appeal from a relevant person, i.e. the normal Decision Making & Appeals (DMA) process;
2. a review of circumstances some time after the decision, to establish whether it is still appropriate.

If the decision maker decides that direct payment to landlord is appropriate, they should set a diary date (within 12 months) in order to conduct a review of their decision. Decision makers may also wish to set a review date where a claimant has been referred to advice agencies for help in managing their financial affairs. The

decision may still be reviewed if there is a relevant change in circumstances or if requested by the claimant.

Banking Advice

Where a tenant indicates that they do not have a bank account, they should be issued with a Basic Bank Account information pack as soon as their entitlement to HB is decided. Procedures on how to provide basic bank account advice are provided separately to this guide.

See www.merton.gov.uk/basicbankaccounts/bctb.

Referrals to advice services

Claimants who are considered unlikely to pay their rent should be encouraged to seek money advice. In many cases, effective advice on handling money and everyday expenses may remove or reduce the need for direct payment to landlord to be made.

Referrals may be made regardless of the outcome of the decision on making direct payment to landlord. Even where it has been decided not to make direct payment to landlord, the claimant may benefit from the provision of money advice. Alternatively, where direct payment to landlord is being made, money advice might help a claimant towards eventually managing his or her own financial affairs.

Advice agencies

Merton Money Advice

Merton Money Advice provide advice on a wide range of money matters including mortgage arrears, rent arrears, council tax arrears, secured loans, credit and store cards, bank and finance house loans. Telephone advice is available between 2:00-4:00 Mondays and 10:30-12:30 on Thursdays.

Telephone: 020 8640 3194.

Merton Debt advice

For advice, casework and advocacy. Funded under the Community Legal Services initiative, this service is only available to those who qualify for legal help (former legal aid).

Telephone: 020 8288 0437

Websites

Citizens Advice Bureau:	www.adviceguide.org.uk/index/life/debt
National Debt Line:	www.nationaldebtline.co.uk
Money Made Clear:	www.moneymadeclear.org.uk/home
Debt Advice Trust	www.debtadvicetrust.org

Part 4 - Securing or retaining an affordable tenancy

In April 2011, the DWP have temporarily relaxed the guidance on direct payments to help tenants to secure or retain tenancies where the changes to the LHA rates mean that a tenants HB is reduced.

The changes to LHA rates will mean that some tenants will have a new shortfall between their HB entitlement and their contractual rent. Some may need to move, but in other cases it may be possible for the tenant (perhaps with the help of Housing Options Team - 020 8545 3636) to negotiate with the landlord a reduction in the rent to a level which the tenant can afford.

Policy intention

The new safeguard provision is designed to:

- encourage landlords to let at rent levels that HB tenants can afford or
- to open up a let to HB claimants in the first place; and
- secure or retain a tenancy if the rent is at a level we consider a tenant can reasonably afford whilst in receipt of HB.

Conditions of the safeguard

For this safeguard to apply the landlord must:

- Agree, in writing, to reduce a previously higher rent to an affordable rent or
- Agree to let a property to a HB claimant on a new tenancy at an affordable rent.

The main condition is that the shortfall between the rent and the HB, if there is one, must be at a level that the tenant can afford to pay. If the tenant continues to have a shortfall which they cannot meet they will be unlikely to be able to meet their rental commitment and will be at risk of eviction. In these circumstances, they will not be able to retain the tenancy and so the safeguard will not apply.

Also, if the landlord has previously rented at the LHA rate or below, then this safeguard will not apply - this policy is designed to encourage landlords who previously rented at a higher level to reduce their rent.

Definition of affordable

DWP guidance states that:

In the vast majority of cases this will be the LHA rate which applies to the tenant and on which their maximum rent determination is based. However, some tenants may decide that they can pay slightly more than the LHA rate if they have other resources.

For example, if they have resources such as capital to meet a shortfall. However you must be satisfied that the rent is affordable to the tenant.

For decision makers “affordable” may be:

- if the rent is at or around the LHA rate for the bedroom rate the claimant is entitled to claim
- if the rent is slightly higher level than the LHA rate but the tenant, or someone in the household, has savings or disregarded income which can cover the small shortfall.

Where a Discretionary Housing Payment is awarded due to the shortfall, the rent by definition would be unaffordable and direct payment would not be appropriate. See www.merton.gov.uk/dhp for more details about [Discretionary Housing Payment](#)

If the landlord increases the rent and this becomes unaffordable for the tenant, direct payments will stop under the temporary safeguard. We can then consider whether direct payments should continue under the vulnerable tenant guidance in [Part 3](#) of this policy.

Identifying direct payments to secure or retain a tenancy

Normally the initial approach for a direct payment should come from the tenant but we may also be contacted, for example by the

- landlord
- housing advice officers or the homelessness prevention team
- welfare advice organisations, including money advisors

We may also identify cases where direct payments might provide a landlord with an incentive to reduce a rent or take on a HB tenant, and we should suggest it to both the tenant and the landlord.

In most cases, the tenant 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 tenant is against direct payments it is for us to make a decision in their best interests.

The normal considerations on whether the landlord is a fit and proper person apply. See section on [Fit and proper test](#).

Requests for direct payment to landlord to secure or retain a tenancy

How should requests be made?

Requests for direct payment to landlord to secure or retain a tenancy, should be made in writing in the following ways:

- on the request form shown in Appendix 2. This is downloadable from our website.
- Online at www.merton.gov.uk/benefitforms
- A written request in any other format

It is important that the request is made in writing at the time the claim is made and the claim is set up to make direct payment before the first payment is made.

When is a request likely to be made

The request for direct payment may be made either:

- When a new tenancy is being considered or has been awarded
- When an existing tenancy is renewed or existing HB award is reduced as a result of the HB changes.

Each scenario is explained below.

Decision making - direct payments for vulnerable tenants

Securing a new affordable tenancy

Where a customer is requesting direct payments to the landlord for a new tenancy we will apply the safeguard if we are satisfied that:

- the rent has been *reduced* to accommodate a new HB tenant and is affordable to the tenant or
- the letting would not have been made without direct payments and the rent charged is affordable .

Agreeing to Direct Payments before the tenancy is signed

Clearly landlords will want to be satisfied that they will get direct payments before signing a tenancy agreement. We can agree that if the tenant is entitled to HB we will agree direct payments in advance if the rent charged is affordable. If in doubt landlords should contact the Benefits Office to clarify.

As part of that agreement we will make it clear to all parties that:

- The agreement to make HB payments direct is not a confirmation that HB entitlement actually exists;
- it is the HB entitlement that will be paid direct and that this may not necessarily be equivalent to the LHA rate

Landlords will be made aware that the HB may be reduced for example:

- if the tenant is not entitled to maximum HB due to their income,
- if there are non-dependant adults in the property,
- if there are overpayments being recovered from the HB.

Tenancies secured through Housing Options Team

Housing Options Team will always work with the landlord to ensure the rent is affordable and therefore we will *always* make direct payments to landlords in these cases, unless requested otherwise. Housing Options Team will explain the details above when signing up landlords and tenants.

Other new tenancies

For other new tenants, we will agree direct payments if the landlord and tenant confirm, in writing, that they want direct payments and:

- that the landlord has reduced the rent charged to an affordable level or
- that they would not have let to the tenant without direct payments and the rent is affordable.

Existing tenancies - reducing the rent to an affordable level

Where a tenant has an existing claim and their HB is reduced as a result of a reduction in LHA rates from April 2011, we will be able to pay landlords direct if the landlord has agreed to reduce the rent to an affordable level and

- includes this reduction in a new tenancy agreement or
- provides a written variation in the rent if the tenancy is not yet due for renewal.

For these cases the landlord and tenant should request direct payments to retain a tenancy and confirm:

- that they want direct payments; and
- provide the new tenancy agreement or variation in rent agreement.

NOTE: If a landlord confirms in writing that they will reduce the rent down to the LHA rate when the 9 months transitional protection ends, we will commence direct payments from the next payment due.

Notifying affected parties

Most decisions to pay the landlord directly for vulnerable tenants will be made with a request from a landlord. We must make a decision to pay the landlord directly on every case where a request is made. The landlord and claimant are affected parties and must be notified, in writing, of the decision to pay and be granted appeal rights (see below).

Appeal rights

Any person affected by the decision to whether to pay the landlord has the right of appeal under the usual arrangements. If a person wishes to appeal they can:

- Request an explanation of the decision
- Request that we look at the decision again - if the Request form has not already been filled in at this point decision makers should send the form straightaway.
- Request an appeal to the Tribunal Service - as part of the appeals process decision makers should look at the decision again. If the Request form has not already been filled in at this point they should send the form straightaway.

A landlord can appeal against a decision on direct payment to landlord even if they did not request the direct payment. There is no definitive guidance from DWP about whether a landlord is a person affected in these circumstances, however, Merton will accept an appeal from a landlord and The Tribunal Service will make the decision whether they can hear a landlord's appeal.

Further information

DWP LHA Guidance Manual. Chapters 4,5 & 6:

www.dwp.gov.uk/docs/lha-guidance-manual.pdf

Merton Citizen's Advice Money Advice web site:

www.mertoncab.org.uk

Merton Benefits Service website (LHA):

www.merton.gov.uk/living/benefits/hb-ctb/local_housing_allowance

Money advice from Consumer Financial Education Body (CFEB):

www.moneymadeclear.org.uk

Basic Bank Accounts - CFEB leaflet on Basic Bank Accounts:

www.moneymadeclear.org.uk/pdfs/bank_accounts.pdf

Form to request Housing Benefit to the landlord or agent - vulnerable tenant

Please fill in this form (page 2) if you are the claimant or the person you are representing wants their HB paid their landlord, or their agent. Return the form to the address shown at the bottom of the page.

Direct payment safeguard

LHA allows us, in limited circumstances, to pay the landlord, or their agent. We will need the agreement of the claimant. Direct payment has **safeguard** principles to:

- protect those vulnerable tenants who would have difficulty with paying their rent on time; or
- to secure or retain a tenancy at an affordable rent. This should help the claimant and their family to secure a home or continue to live in their home.

See the **Safeguarding Policy** at www.merton.gov.uk/hbctbpayment for full details

The decision to pay HB direct to the landlord lies with Merton's Housing Benefit Section. We will take into account all the factors and evidence presented to us. We will consider the details given in the form and we may write to the claimant to ask further questions or invite them to an interview to discuss the request further.

In accepting direct payments landlords should note the following:

- The agreement to make HB payments direct is not a confirmation that HB entitlement actually exists;
- it is the HB entitlement that will be paid direct and that this may not necessarily be equivalent to the LHA rate. HB may be reduced:
 - if the tenant is not entitled to maximum HB due to their income,
 - if there are non-dependant adults in the property,
 - if there are overpayments being recovered from the HB.
- landlords are liable to inform the Benefits Office of any changes in their tenant's circumstances they are aware of.
- Landlords may be invoiced for an overpayment of HB that they could reasonably have known about.

For further guidance please contact Merton Housing Benefit Office:

Phone: 020 8274 4903

Fax: 020 8545 3477

E mail: housing.benefits@merton.gov.uk

Write to: Merton Housing Benefit Office, PO Box 610, Merton Civic Centre, London Road, Morden, Surrey, SM4 5ZT

Section 1 - This form is being filled in by:

- A representative of the claimant we need to know who you are - go to Section 2
The claimant Go to section 3

Section 2 - Your details (representative)

Name: _____

Address: _____

Relationship to the claimant named below: _____

Go to Section 3

Section 3 - Claimant details

Name: _____

Address: _____

Benefit Reference number (if known): _____

National Insurance number:

Section 4 - reasons for requesting direct payment to landlord

1. Do any of the following apply? (please tick any that apply)

- The claimant has a person appointed to act on their behalf.
- The claimant is being provided with support to help them take responsibility in managing their affairs
- The claimant has a landlord that is likely to have difficulty in managing their affairs
- none of the above apply - please go to question 2

If any of the above apply we are unable to pay HB directly to the landlord.

2. Which of the following applies to you/the claimant:

- a person who is likely to have difficulty in paying their rent on time because they have difficulty in managing their financial affairs.

a person who is unlikely to pay their rent because they have a history of falling into arrears.

3. Is the situation outlined in question 2 likely to be:

- permanent
- temporary. Please state when the situation is likely to change

4. Could the claimant manage their financial affairs if they were given advice and support to do so?

- yes We will refer the claimant to Merton Money Advice and/or assist with an application for a Basic Bank Account
- no Please state why not in the space below. Please give any medical conditions or previous history that is relevant.

5. What evidence are you providing to support your request for direct payments to the landlord?

Please continue on a separate sheet if necessary

6. We need details of a bank account to pay Housing Benefits directly to the landlord. We do not pay by cheque.

Bank name: _____ Account name: _____

Sort code: ____ - ____ - ____ Account number: _____

Roll number: _____

Claimant's signature: _____ Date: _____

Representative's signature: _____ Date: _____

If you would like more information in your own language, please contact us at the address shown in the box below.

Albanian

Nese deshironi me shume informacion ne gjuhen tuaj, ju lutemi te na kontaktoni ne adresen e dhene ne kutine me poshte.

Arabic

إذا أردت معلومات إضافية بلغتك الأصلية الرجاء الاتصال بنا في العنوان المدون ضمن الإطار أدناه.

Bengali

যদি আপনার নিজের ভাষায় লেখা আরও তথ্য চান তাহলে দয়া করে আমাদের সঙ্গে যোগাযোগ করুন, তলার বক্সে আমাদের ঠিকানা রয়েছে।

Chinese

如果你需要用中文印成的資料，請按低端方格內提供的地址與我們聯系。

Farsi

اگر مایل به اطلاعات بیشتر به زبان خود هستید، لطفاً با ما از طریق آدرس زیر تماس بگیرید.

French

Pour tout renseignement complémentaire dans votre propre langue, veuillez nous contacter à l'adresse figurant dans l'encadré du bas.

Polish

Jeśli życzy sobie Pan/i więcej informacji w swoim języku, proszę się z nami skontaktować pod adresem podanym w dolnej ramce.

Punjabi

ਜੇਕਰ ਤੁਸੀਂ ਪੰਜਾਬੀ ਵਿਚ ਹੋਰ ਜਾਣਕਾਰੀ ਲੈਣੀ ਚਾਹੁੰਦੇ ਹੋ ਤਾਂ ਹਿੱਥਾ ਕਰਕੇ ਹੇਠ ਲਿਖੇ ਖਾਨੇ ਵਿਚ ਦਿੱਤੇ ਪਤੇ 'ਤੇ ਸਾਡੇ ਨਾਲ ਸੰਪਰਕ ਕਰੋ।

Somali

Hadii aad u baahan tahay faahfaahin intaa kabadan oo ku soobsan afkaaka hooyo ama Af Somali fadlan lana soo xiira cinwaanka hoos ku qoran.

Spanish

Si usted desea más información en su propia lengua, por favor contáctenos en la dirección al pie del formato.

Tamil

உங்கள் மொழியில் மேலதிக தகவலைப் பெற விரும்பினால், அடியிலுள்ள பெட்டிக்குள் தரப்பட்டுள்ள விலாசத்தில் எம்முடன் தொடர்பு கொள்ளுங்கள்.

Urdu

اگر آپ اپنی زبان میں مزید معلومات حاصل کرنا چاہتے ہیں تو براہ کرم ہم سے اس پتے پر رابطہ قائم کریں جو کہ نیچے کے بکس میں درج ہے۔

You can also get this information in large print, in Braille and on audiotape

**Merton Benefits Service
PO Box 610,
London Road, Morden,
SM4 5ZT**

Form to request Housing Benefit to the landlord or agent - securing or retaining a tenancy

Information about direct payment to landlord

Under Local Housing Allowance (LHA) rules, Housing Benefit (HB) is normally paid directly to claimants, not landlords. However, we can pay directly to a landlord if this secures a new tenancy at an amount affordable level or retains an existing tenancy at an affordable level.

Direct payment safeguard

LHA allows us, in limited circumstances, to pay the landlord, or their agent. We will need the agreement of the claimant. Direct payment has **safeguard** principles to secure or retain a tenancy at an affordable rent. This should help the claimant and their family to secure a home or continue to live in their home.

See the **Safeguarding Policy** at www.merton.gov.uk/hbctbpayment for full details

Thinking of letting a property?

If you have not yet let a property, will give a commitment to pay a landlord direct if:

- o the rent charged is affordable under the definitions in the **Safeguarding Policy** and
- o a new tenancy has been awarded on condition the HB payments are made directly to the landlord.

If in doubt landlords should contact the Benefits Office to clarify. In accepting direct payments landlords should note the following:

- The agreement to make HB payments direct is not a confirmation that HB entitlement actually exists;
- it is the HB entitlement that will be paid direct and that this may not necessarily be equivalent to the LHA rate. HB may be reduced:
 - o if the tenant is not entitled to maximum HB due to their income,
 - o if there are non-dependant adults in the property,
 - o if there are overpayments being recovered from the HB.
- landlords are liable to inform the Benefits Office of any changes in their tenant's circumstances they are aware of.
- Landlords may be invoiced for an overpayment of HB that they could reasonably have known about.

For further guidance please contact Merton Housing Benefit Office:

Phone: 020 8274 4903

Fax: 020 8545 3477

E mail: housing.benefits@merton.gov.uk

Write to: Merton Housing Benefit Office, PO Box 610, Merton Civic Centre, London Road, Morden, Surrey, SM4 5ZT

Section 1 - Landlord details

Name: _____

Address: _____

Section 2 - Claimant details

Name: _____

HB claim address for direct payments: _____

Benefit Reference number (if known): _____

National Insurance number: _____

Section 3 - Landlord bank details

We need details of a bank account to pay Housing Benefits directly to the landlord. We do not pay by cheque.

Bank name: _____ Account name: _____

Sort code: ____ - ____ - ____ Account number: _____

Roll number: _____

Section 4 - Declaration from landlord

I can confirm that:

- The tenant agrees to the direct payment of their Housing Benefit and has signed this form; and
- I am aware of the conditions of the direct payments in the Safeguarding Policy; and
- I am aware of my duty to report changes that I am aware of and that I may be liable to re-pay any overpaid Housing Benefit; and
- Either (tick one):
 - The rent charged is at or close to the LHA rate that applies to the tenant and this is a new tenancy which has been agreed on condition that Housing Benefit will be paid directly to me; or
 - The rent has been reduced from a previously higher amount and I will extend an existing tenancy if the Housing Benefit will be paid directly to me.

Landlord's signature: _____ Date: _____

Claimant's signature: _____ Date: _____