

# NEWSLETTER

*'Run by landlords for landlords'*

**From the Chair  
2008**

The New Year ushers in yet another busy year of regulatory changes for us all. Just when we have all come to terms with the impact of the Tenancy Deposit Protection legislation and the need for a full inventory / condition report / photographic record of our lettings, the next change is almost upon us when the new Local Housing Allowance (LHA) scheme comes into effect from April 7th this year. Full details of the impact this will have on all who have Housing Benefit tenants (even if you don't know they're on benefits) are in the very useful article on pages 2–5.

### **SWLA—value for money ?**

A member recently sent in a local newspaper article offering landlords' seminars covering Deposit Schemes, HMOs etc. for around £50 for the day! As SWLA members we get all this included as part of our annual fee along with regular meetings, free advice, free stationery etc. and (lest we forget) probably the best value discounted landlords insurance scheme in the country.

### **Tenancy Deposit Schemes**

So far we have seen only very limited feedback on these. Please let us know your experiences. On the positive side, what the introduction of the Deposit Schemes DID do was to make landlords look again very carefully at their admin. methods, systems and record keeping. In many cases the actual results have been a much costlier experience for tenants with the introduction of non-refundable admin. fees charged at the outset.

### **On-line Court applications**

If the worst happens and you need to go to court then consider using the Court Service on-line system. The cost is £50 cheaper (£100 instead of £150). Please note this is really for Section 8 possession and arrears cases. At present it cannot be used for possession only. Don't forget, a Section 8 can be as little as 16 days notice, depending on the Grounds as against over 2 months on a Section 21.

### **And finally....**

The Inland Revenue is coming! They have started sending out letters to people throughout the country about undeclared letting income! (500 initially we are told with many more to come!). The Revenue office has many sources. Local authorities with HMOs and Housing Benefit payments; Deposit Protection schemes must provide details of deposits protected. In addition the Land Registry is legally required to pass on details of all property sold! The writing is on the wall for anyone not declaring their letting income / properties.

Trevor Anderson  
Chair SWLA

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2008

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### **Diary dates 2008**

Plymouth meetings  
March 27th  
May 15th  
July 17th  
Sept 18th  
Nov 20th  
Bristol meetings  
To be advised

## What is the Local Housing Allowance?

1. The Local Housing Allowance (LHA) is a new way of deciding rent payments for people receiving Housing Benefit (HB). It does not replace HB. It uses a flat rate allowance based on the size of the tenant's household and the locality in which they rent property to decide the amount of benefit they could receive. This amount is not directly related to the rent that you charge so the benefit that your tenants receive may be higher or lower than the contractual rent. The rate of LHA that claimants receive will generally be reviewed on an annual basis, except where there has been a change in circumstances which affects the room requirement.

Other circumstances, such as the money that the household has coming in or other people living in the household, will still affect the amount of benefit paid so the tenant may not always receive the full rate of LHA.

It will be introduced from April 7th 2008.

### 2. Will existing benefit claims be transferred to LHA ?

Not straight away. Tenants will continue to receive benefit under existing rules until a change occurs i.e. if they have a break in their claim of one week or more or they move to a different address. Benefit will then be transferred to the LHA scheme. However, if there is a death in the household, and the change would result in a reduced LHA, the authority will protect the tenant for 52 weeks from the date of death at their current rate. Also, if a tenant makes a claim for LHA but the LHA rate is less than the contractual rent, and the tenant has not claimed benefit in the previous 12 months he / she will be protected under the 13-week rule.

### 3. What are the rates based on?

Different LHA rates will apply in different areas. Within those areas, they will be based on the median (centre value not average) rent charged by landlords in the private sector for properties of various sizes. LHA rates will be further broken down into 'Room Rates' that will apply depending on the number of people in the **household**, including any non-dependants. Size criteria will be based on allowing one bedroom for:

- a) Every adult couple
- b) any other adult aged 16 or over
- c) any two children of the same sex
- d) any two children regardless of sex under age 10
- e) any other child (foster children are not currently included in the calculation)

The number of living rooms, kitchens and bathrooms is ignored for the purpose of the size criteria.

### LHA Rates

#### 4. How is the LHA calculated?

The LHA is calculated by the Rent Service for individual areas, known as Broad Rental Market Areas (BRMAs), each month. It is based on the median rental figure for that particular area depending on the number of bedrooms in the property. Basing the LHA on the median of rents for a certain property size means that exactly half of the rental properties of that size in the area will be affordable within the LHA amount that the customer receives.

#### 5. Who decides LHA rates?

Having set the BRMAs, Rent Officers are responsible for calculating the LHAs for different sizes of property in that area. Once the Rent Service has determined the LHA rates for an area, an individual customer's benefit will depend on their age and the size of their household. For example a person aged under 25 (with some exceptions) will receive the shared room rate whilst a couple with one child will receive the two-room rate.

#### 6. When will LHA rates be published?

Rates will be published at the end of the month before the month that they come into force. For example, the April rates will be made available at the end of March.

#### 7. Where will LHA rates be published?

Each local authority will publish the monthly rates in their own area. In addition, we encourage Jobcentre Plus offices and local support groups such as Citizens Advice Bureau to publish LHA rates locally.

#### 8. What will rates look like?

An example of what LHA rates might look like for a particular area is shown below. (These rates are provided for illustration purposes only), and are the provisional LHA rates for Plymouth and areas within the same BRMA.

**Weekly** - Shared room rate £60.00, 2 Bedroom rate £117.69, 3 Bedroom rate £138.46, 4 Bedroom rate £190.38, 5 Bedroom rate £249.00,

#### 9. How will LHA areas be decided?

Each local authority area will have at least one Broad Rental Market Area (BRMA) within which a set of LHA rates will apply. Each BRMA will include a mix of accommodation as well as facilities such as shops, hospitals and schools. Plymouth is one BRMA and is made up of the whole of Plymouth and some surrounding areas: up to Bigbury, Tavistock and Looe.

#### 10. Will there be any right of appeal against the levels of allowances for each Broad Rental Market Area determined by the Rent Officer?

No, because the BRMA covers an area which includes other tenants, any appeal received could ultimately change the LHA rate for tenants who have not appealed and are content with their allowance. This is because any decision would have to be

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implemented to all tenants receiving that BRMA / LHA rate.

## **11. What if the customer's benefit is higher than their rent?**

They may keep any of the excess that they are paid up to a maximum of £15 per week. This excess will not normally be taken into account when deciding other benefits.

## **12. Will this excess be capped?**

Yes, the maximum excess permitted will be £15.

## **13. What if the customer's benefit is lower than their rent?**

You may ask them to make up any shortfall out of their other income. Alternatively, the customer may also choose to move to cheaper accommodation.

However, if the customer previously paid their rent without any support from HB in the past year they will be entitled to an initial 13 weeks of benefit that will cover the full rent, without any restrictions.

## **14. Will new customers be assessed under the old rules and paid the higher amount if they would be better off?**

No. When a new claim is made, there is no 'better off' calculation. The LHA will apply to all new claims from the date it is introduced.

## **15. What if there is provision for a contractual rent increase in the middle of the year?**

The rate of benefit that your tenant receives is a flat rate allowance based on the LHA rate in effect for your area rather than the rent that you actually charge them. This means that your tenant's LHA rate will not change even if the rent you charge them changes. However, their LHA rate will be reviewed annually.

## **Service Charges**

### **16. How will service charges be handled?**

Normally, customers will not be paid for service charges included in with the rent that you charge them. It does not matter whether rent includes service charges as long as they are a condition of occupancy. The LHA rates are the absolute figures to use. Eligible rent will be based on the LHA rate and full entitlement will either be the LHA rate or their actual rent plus £15.00 whichever is the lower.

### **17. How will joint tenants be treated?**

Joint tenants will receive a rate of LHA based solely on the customer's family plus any non-dependants, sub tenants or boarders that the customer has.

## **Direct payments to the landlord**

### **18. Who will benefit be paid to?**

Personal responsibility and financial inclusion are two key aims of the LHA. In the vast majority of cases, benefit will be paid to the customer who will be responsible for making their own payments of rent to their landlord. In certain circumstances, benefit can be paid directly to the landlord.

### **19. What are these exceptions?**

Local authorities will have discretion to pay rent direct to the landlord where there is evidence that the customer would be unlikely to pay their rent and making direct payments would be in the interests of the customer. The following factors, which are not exhaustive, may be considered when deciding on whether direct payments should be made:

*As a safeguard.* The customer may have learning difficulties, a medical condition or educational needs that suggest that they may have difficulty in handling their own financial affairs; they may not be able to read or have language difficulties; they may suffer from drug or alcohol addiction; or have debt problems. It should be noted that the existence of any of these factors does not necessarily mean that rent should be paid directly to the landlord.

*People who are unlikely to pay their rent.* Customers may have demonstrated, through their past behaviour, that it is improbable that they will pay their rent. In these cases, a local authority may make payments direct to the landlord.

*If 8 weeks rent arrears have built up.* If rent arrears are owed, the local authority will arrange to make payments direct to the landlord unless it is not in the customer's overriding interests to do so. However landlords are encouraged not to wait for the 8 week period to be reached before contacting the local authority.

### **20. Why is eight weeks arrears significant?**

Under Schedule 2 of the Housing Act 1988 (as amended by the Housing Act 1996) a landlord may be able to give notice to end an Assured Shorthold Tenancy Agreement by applying to the Court when at least eight weeks rent is unpaid and the rent is payable weekly or fortnightly.

### **21. What if I, as a landlord, just prefer to have the rent paid direct to me?**

The choice of having the payment made directly to the landlord will not exist under LHA. Taking responsibility for the payment of essential items such as accommodation is an important aspect of helping customers with the move into work. Most customers will be paid their benefit into a bank account and then will be free to set up a Standing Order to pay you, just as they would if they were in work.

### **22. If I ask 8 weeks rent in advance, so that the tenant is 'in arrears' after one day of the tenancy, is the local authority obliged to pay me directly?**

Direct payments should be made to a landlord where "the person is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent".

The Department for Work and Pensions' takes the view that a person cannot be in rent arrears in respect of a period that has

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not yet been served. Additionally, the requirement to pay directly is intended as a safeguard to protect vulnerable tenants as well as legitimate landlords and remedial action may be taken if there is evidence that this is being abused.

## **23. If I do receive the payment of rent direct to me, will I be paid any of the customer's excess as well?**

Not normally. Where a payment is made direct to you, it must not include any amount above which the tenant is liable to pay in rent. If there are rent arrears, any excess may be paid to you but only until the arrears are paid off.

## **24. What if the tenant is withholding rent due to a dispute?**

Once arrears of rent, whatever the cause, have reached 8 weeks then it is mandatory for the local authority to make payment direct to the landlord provided that there has been no finding that the landlord is not a "fit and proper" person or that it is not in the customer's overriding interests to make direct payments. This can include where the tenant is in dispute with the landlord, but they must provide evidence of this.

## **25. What is the "fit and proper" test?**

Local authorities are not obliged to make direct payments 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 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 HB impropriety, such as fraud or a knowing failure to declare changes in circumstances

affecting the payment of benefit. 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.

## **Recovery of overpayments**

### **26. How will overpayments be recovered?**

The rules on the recovery of overpayments are not being changed. Currently:

Benefit overpaid to a landlord can be recovered from either the landlord or the customer, as the local authority chooses; and

Benefit overpaid to a customer can be recovered only from the customer. As most customers will receive their benefit themselves under the LHA, most overpayments will, therefore, be recovered from the customer and not the landlord.

### **27. What if benefit payments were split?**

Split liability for overpayments can already arise where an overpayment accrues over a period, and the payment was made to the landlord for part of that period and to the tenant for the rest of it. In these cases, the local authority can recover from either or both of the landlord and tenant. If the local authority decides to recover from the landlord, the overpayment can be

recovered from future payments, by invoice or other appropriate means.

## **Appeal Rights**

### **28. Will appeals against direct payment decisions be allowed?**

Yes. Both you and your tenant, as persons affected by the decision, may appeal against any decision about whether or not to pay rent direct. Appeals can also be made against decisions on vulnerability.

### **29. If I won an appeal obliging the local authority to make direct payments to me, would the LA pay me all the arrears that are due, even though they had already paid benefit to the tenant?**

No. Even if you win an appeal, the local authority will not make duplicate payment of benefit. Direct payments would be made from an acceptable date in order to ensure that no overpayment occurs.

### **30. Can a tenant or landlord appeal against a decision that the landlord should not receive Housing Benefit on the customer's behalf as an agent?**

No. This decision may not be appealed.

### **31. Will there be any right of appeal about the application of an LHA in an individual case?**

There is no right of appeal or redetermination about the level of LHA or the BRMA on which those levels are based unless, for example, the rent officer has made an arithmetical error.

## **LHA and landlords**

### **32. What other information is available for me?**

DWP and local authorities are working together to ensure that landlords are kept informed of the changes being made to Housing Benefit and that they know where to obtain further advice and information. Your local authority website will be able to provide you with more information about the LHA and how it will operate in your area.

Alternatively you can visit the DWP website: [www.dwp.gov.uk/housingbenefit/lha](http://www.dwp.gov.uk/housingbenefit/lha)

*Taken from a Department of Work and Pensions document*

**Local Housing Allowance -  
What will the published LHA rate look like ?  
Based on the Plymouth BRMA (Broad Rental Market Area)  
(Other Local Authority rates may differ)**

<b>Room requirement</b>	<b>Plymouth— Weekly</b>	<b>'Provisional' Monthly</b>
Shared rate	£60.00	£260.00
1 bedroom (e.g. a 1 bedroom flat)	£91.15	£394.98
2 bedrooms	£117.69	£509.99
3 bedrooms	£138.46	£599.99
4 bedrooms	£190.38	£824.98
5 bedrooms	£249.00	£1079.00

Thus, if landlords are considering a rent review then the Local Reference Rent and Local Housing Allowance are good yardsticks.

## Grounds for possession

### **Grounds for Possession for Tenants of Assured Tenancies**

Before any action can be taken to obtain a Possession Order from the Court, the Landlord must serve a Notice of Intention to seek possession.

How much notice needs to be given will depend on which ground the Landlord uses as a reason for getting a Possession Order. (See below for grounds).

For grounds 1, 2, 5, 6, 7, 9 and 16 the Landlord must give two months notice.

For grounds 3, 4, 8, 10, 11, 12, 13, 14, 14A, 15 and 17 the Landlord must give two weeks notice.

Notice must be given on a special form, which must tell the tenants certain things about their rights (Section 8 Notice). Proceedings must start within 12 months of service of the Notice otherwise a new Notice must be served.

### **Mandatory Grounds if judgement obtained on any of the grounds 1-8 then the court must give possession**

#### **Ground 1 House was or will be landlord's principal home**

Landlord(s) requires the property back in order to live in it. This ground can only be used if before the tenancy the Landlord had lived in the property as his / her main home and before or at the time the tenancy begins the Landlord gave the tenant notice that they might eventually want possession for this reason. (The court can sometimes allow the Landlord possession under this ground even if no notice has been given).

The court has to look at all the circumstances, including hardship to the tenant or Landlord before deciding whether to make an order.

#### **Ground 2 Mortgage lender repossessing property**

The property is subject to a mortgage and the mortgagees are repossessing the property to enforce the charge. Written notice should be given before or at the time the tenancy begins that possession may be required under this ground. (The court can sometimes allow possession under this ground even if no notice is given).

#### **Ground 3 Out-of-season holiday home**

The tenancy is for a fixed period of not more than eight months and the property is occupied as a holiday let and at least twelve months before the tenancy started it had been used as a holiday let. Written notice must be given either before or at the time the tenancy begins that possession might be required under this ground.

#### **Ground 4 Out-of-term student accommodation**

The tenancy is for a fixed period of not more than twelve months and has been let by an educational establishment/institution (e.g. university, colleges etc.) and possession is required. Written notice must be given on or before the tenancy begins that possession might be required on this ground.

#### **Ground 5 Minister of religion's home**

The property is used as a home for a Minister of Religion and is needed for another Minister of Religion. Written notice must have been given at the time or before the tenancy begins that possession might be required under this ground.

#### **Ground 6 Demolition and reconstruction**

The Landlord intends to demolish or reconstruct the whole or part of the property or carry out major works to all or part of it and the works cannot be carried out if the tenant is there (e.g. because the tenant will not agree to give access or agree to be restricted to living in part of the property whilst works are carried out on the other part). The Landlord must pay the tenants reasonable removal expenses if the possession is granted under this ground.

#### **Ground 7 Death**

Where the previous tenant has died and the new tenant is not entitled to "succeed" to the tenancy and the tenancy is a periodic tenancy which has passed to the new tenant on death or under a Will. The Landlord must bring proceedings within twelve months of the death of the tenant or twelve months of the date the Landlord became aware of the tenant's death.

#### **Ground 8 Substantial arrears of rent**

Rent is unpaid at the time of service of Notice seeking possession and at the time of the hearing for a Possession Order;

- a)** In the case of rent paid weekly or fortnightly at least eight weeks rent is owing.
- b)** In the case of rent paid monthly at least two months rent is owing.
- c)** In the case of rent paid quarterly at least one quarters rent is more than three months overdue.
- d)** In the case of rent paid yearly at least three months rent is more than three months overdue.

Two months rent arrears will normally give the Landlord an automatic right to a Possession Order.

### **Discretionary grounds on which a court may order possession on grounds 9-17**

#### **Ground 9 Alternative accommodation**

That there will be suitable alternative accommodation available for the tenant if a Possession Order is made. The Landlord must pay the tenant's reasonable removal expenses if a Possession Order is made. A tenant can oppose a Possession Order on this ground if the alternative accommodation is not suitable.

#### **Ground 10 Rent arrears**

Rent which is lawfully due from the tenant has not been paid by the time the possession proceedings are started and was owed at the time the Notice seeking possession was served. If a tenant has been offering the Landlord rent and the Landlord refused to take it, the tenant will have a defence to the possession proceedings but must pay the amount owed in to court.

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*Grounds for possession cont'd.....*

**Ground 11 Persistent delay in payment of rent**

The tenant has repeatedly failed to pay rent on time. There need not be rent arrears at the time possession proceedings are started.

**Ground 12 Breach of terms of tenancy**

The tenant has breached their part of the Tenancy Agreement.

**Ground 13 Waste or neglect of property**

The tenant, or anyone living with him/her have allowed the property or parts of it (including common parts) to deteriorate. If the deterioration has been caused by someone living with the tenant, and the tenant has failed to get rid of that person then a Possession Order may be made.

**Ground 14 Nuisance**

The tenant or a person living with him/her or visiting him/her has caused or is likely to cause a nuisance or annoyance to neighbours or their neighbours, guests or visitors to the area. Or the tenant has been convicted of using the property for immoral or illegal purposes or has been convicted for an arrestable offence committed in the area.

**Ground 14A Violence between joint tenants**

A married couple or common law couples live in the property and one of them is the tenant of the property and one of them has left the property because of violence or threats of violence from the other partner or a member of that partner's family who is also living in the property. The Landlord must be a Housing Association/Trust etc. (but not a private landlord) to be able to use this ground. The court also has to be satisfied that the partner who has left the property is unlikely to return. Also the partner who has left must be served with a Notice seeking possession so they know about the possession proceedings.

**Ground 15 Damage to furniture**

Furniture at the property has deteriorated because the tenant or someone living with the tenant has not looked after the furniture. If the damage has been caused by someone living with the tenant and the tenant has not taken steps to get rid of that person then a Possession Order may be made against the tenant.

**Ground 16 Former employee of landlord**

The property was let to the tenant as part of his/her employment with the Landlord and the tenant is no longer employed by the Landlord and the property is needed for another employee.

**Ground 17 False statement by tenant to landlord**

The tenant or one of the tenants, or person acting on the instruction of the tenant has given false information to the Landlord which has made the Landlord grant the tenancy.

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## Members' letters

Dear Trevor and Bob

Chris Brown and I want to thank you for a most useful talk last year and the introduction to Paul Trueman of JTP Associates when he spoke to us on landlords' responsibilities to minimise fire risk to our tenants.

We knew we were not quite up to the mark but were unsure how to proceed and also what influence fire risk mitigation and resultant costs would have on the various options we had in mind for development of one of our bigger properties.

Paul has given us two excellent Fire Risk Assessments - they are beautifully and clearly presented with priorities for action listed - but more than this, he has given us very practical guidance, having checked up (anonymously) on various uncertainties in the status of our bigger property, and he promises advice and help in the implementation of our plans.

The Assessments were not expensive and represent very good value for money - the certainty we have now of our compliance when we proceed with the development will save us thousands of pounds we would probably have spent unnecessarily. We can thoroughly recommend him to all other members.

Many thanks  
Deborah McLaren

## Rent repayment order

In a case in Warwick, believed to be the first case of its kind, a landlord was fined only £1,000 per property for having properties that were **not licensed and should have been so** (plus £1,570.80 in costs). This level of fine was much lower (maximum £20,000) but resulted in the other penalty contained in the Housing Act, that of a Rent Repayment Order.

The tenants of two of the properties were students and, supported by the housing advice centre at University of Warwick they pursued the landlord through the Residential Property Tribunal Service (RPTS). The students claimed the accommodation was poor and that they received poor service whilst renting it. The RPTS, however, found that the accommodation was above average.

The result was that they were awarded 50% of their rent back, a figure totalling £18,450. The students claimed a Rent Repayment Order for the period from September 2006 when their tenancy started through to May 2007 when the landlord applied for a licence. If they had been there a full year or been awarded 100% of the figure rather than on 50% the award could have been more than double.

It can be seen that this is an area that landlords cannot afford to get wrong.

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## Energy Performance Certificates Landlords and Tenants

The EU Energy Performance of Buildings Directive requires an Energy Performance Certificate (EPC) for all buildings. Introduced for residential property sales on a phased basis from 1 August 2007 and now scheduled to roll out in stages commencing 6 April 2008 to cover all commercial property and homes for rent.

The critical date for most Landlords and Tenants is **1<sup>st</sup> October 2008** when in addition to all commercial property, an EPC will also be required when homes are sold without requiring a Home Information Pack (for example a non-marketed private sale between individuals / a portfolio sale of homes or Right to Buy sale to a social housing tenant ). **Energy Performance Certificates will also be required when homes are rented out.**

From 1<sup>st</sup> October if you are renting out your property you will need to provide a certificate to any prospective tenant. There is no need to obtain an Energy Performance certificate for an existing tenancy.

Once obtained a certificate remains valid for up to 10 years and if a valid Energy Performance Certificate exists when changing tenants , no new certificate is required. This applies to both private and social sector landlords and tenants.

An Energy Performance Certificate will need to be provided for all buildings when they are constructed, sold or rented.

There are a few exceptions

- Places of Worship
- Stand-alone buildings of less than 50 square metres (**except for dwellings**)
- Temporary buildings with a planned time of use of 2 years or less
- Particular buildings with low energy demand ( e.g. barns)
- In limited conditions buildings to be demolished are exempt

An EPC is not required for any off-plan sales before the construction of a building is completed

Want to know more and learn how the house moving process can be made more speedy and less stressful, contact: **Mike Goldsmith on 01752 668246 or email: [mrg@gardandco.com](mailto:mrg@gardandco.com).**

*Prepared by Mike Goldsmith of Gard & Co.*

## Ways to protect your property without taking a deposit

- **Consider use of any local rent bond schemes** -Your local authority will be able to give details of any schemes.
  - **In any option, check references very carefully**
  - **Use a guarantor** - who is a home owner and would provide assurance that rent/damage will be paid for before the end of the tenancy - you must satisfy yourself as to the financial status and ability to pay of the guarantor. Check the guarantor's identity. Make sure that the person who signs the guarantee is actually the guarantor. Meet the guarantor and ask for proof of identity. The guarantor does not need to be a home owner but the advantage is that the landlord may be able to obtain a charge on their property to enforce payment.
  - **A non-returnable fee for administration** - this must relate to setting up the tenancy agreement.
  - **What won't work** -
    - Charge rent and offer cash back to the tenant if the property is left in good condition with the rent paid in full. The cash back element would have to be paid into a deposit scheme.
    - Take a banker's draft or cheque and only cash it if necessary at the end of the tenancy. The draft or cheque might end in being out of date. The draft or cheque is a security and would have to be paid into a deposit scheme.
    - A utility / cleaning deposit. If described as such there is an implication of return of money. If the money is paid as a deposit to secure the tenant's obligations "under or in connection with" then it falls foul of the legislation. Using the words "in connection with" nets things related to the tenancy. Paying utility bills is related to the tenancy
    - An administration fee but with a refund or rebate.  
The fee **must** be described as **non-returnable**
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It should be noted that Curtis (Solicitors) are offering SWLA members 10% discount on the fees in the enclosed offer and notice of charges .

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# SOUTH WEST LANDLORDS ASSOCIATION

*From the NFRL magazine*

Under current legislation, all housing benefit claimants have an automatic right to elect to have their housing benefit paid to their landlords without having to state their reasons for doing so. Those who make this choice do so for a number of reasons, namely it gives prospective landlords sufficient comfort that the rent will be paid, to induce landlords to let property to Housing Benefit claimants, thereby enabling these tenants to secure suitable accommodation.

From April this year, this right will be removed from all private sector tenants. Only those claimants who are willing to go through the humiliation of admitting that they are vulnerable, or are unable to manage their finances, or more than 8 weeks in arrears and are able to prove this to the satisfaction of their local Housing benefit office, will be allowed to have their benefit paid to their landlords.

It is understood that the DWP anticipates that this will reduce the number of claimants whose housing benefit is paid to their landlords from around 50% to about 10%.

In pushing this legislation, the DWP has stated that one of the key aims of the reform of Housing benefit is to "promote personal responsibility". This, in theory, is very laudable. What it tends to ignore, however, is that it will also expose people on limited incomes to the temptation to act irresponsibly—not because they are necessarily irresponsible people, but because they are human beings with human failings.

Faced with the choice to spend their Housing Benefit on rent,

or on something more immediately appealing or more pressing, some of them will inevitably choose the latter, a choice which, under current legislation, they can avoid having to make.

Even Housing benefit offices, in introducing the changes, acknowledge that "these aims bring with them increased risk that some customers may not, or will not use their Housing benefit entitlement to pay their rent".

The reality is that paying rent is about as attractive to the average Housing Benefit claimant as paying income tax is to the average UK taxpayer. The fact is that the DWP knows that its experiment in social engineering is very likely to be a disaster, but they seem determined to go ahead anyway and they claim to have cross-party support.

They have trialled this new policy in nine "pathfinder" areas over the last 2½ years and the findings of reports commissioned by the DWP indicate that it will lead to a significant reduction in the stock of accommodation available to Housing benefit claimants when it is rolled out nationally.

The DWP has quoted widely from a piece of research which supports their policy. In the information currently being disseminated by the local authorities, they draw our attention to a report which concludes that "this increased risk only applies to a minimal section of our customers". But if you read the report which they cite in support of this statement, "Local housing Allowance Final Evaluation: the qualitative evidence of claimants' experience in the nine pathfinder areas" you will soon see that its findings are based on the evidence of just 44 claimants an insufficient

sample for the report to have any credence.

Also the type of claimant likely to be prepared to take part in "in depth interviews" is, almost by definition, the type of claimant most likely to act responsibly in financial matters, and least likely to admit to misappropriation of Housing Benefit, either intentionally or under the influence of financial pressures. It can be seen, therefore, that findings of the report are fundamentally flawed in that its approach was bound from the outset to produce conclusions which support the policy being advocated by its commissioners. Yet two other reports, which the DWP do not appear to draw attention to are based on the evidence of between 1,109 and 1,845 respondents stated that:

- 44–56% of landlords were less likely to let to Benefit tenants because of new legislation.
- 26–28% had declined to let to a Benefit tenant
- 17–23% had gone as far as not renewing an existing tenancy thus making a claimant homeless
- Ending payments direct to landlords was the most commonly given reason

Were these results replicated across the country between a fifth and a quarter of private landlords would decline benefit claimants. This is bound to increase the number of homeless families.

Even benefit staff are not infallible and mistakes will be made as to who is vulnerable. A great responsibility is being placed on Benefit teams and the potential for litigation because a request for direct payment was wrongly refused.

*Extract from an article by John Coventry*

# SOUTH WEST LANDLORDS ASSOCIATION

## *From the Letting Network e-letter*

### **Energy Performance Certificates**

Energy Performance Certificates (EPCs) are a mandatory part of Home Information Packs (HIPs). They will also be introduced in commercial and the residential lettings market over the next 12 months.

The wider introduction of HIPs across all properties for sale and EPCs for commercial and residential lettings will require a significant increase in the number of Domestic Energy Assessors. (DEAs)

### **Energy Performance Certificates for rental properties**

If all goes according to plan it will be illegal to advertise a property to rent after the introduction of the legislation unless it has an Energy Performance Certificate (EPC). This will look a bit like the coloured bars that are on many domestic appliances. It will show two things, firstly the current efficiency of the property and secondly the potential allowing for reasonable changes.

There will be two charts produced, one will be the energy efficiency and the second will be the environmental impact rating. A very large building may get a great energy efficiency rating but still have a fairly large environmental impact. Each EPC will have a unique serial number. The legislation allows for a fine of £200 for failure to comply.

The big problem for the rental market is that to reduce energy consumption by making a property more energy efficient will be a cost to the landlord, and the gain will be to save costs for the tenant. There are grants in many areas for some properties to make improvements. Enquiries should be made of the local authority to find out what is available.

The idea behind the EPC is that a prospective buyer or tenant will be able to see the rating and make an informed choice about whether or not to rent that property based on its energy efficiency. This is a good idea, particularly as the rating will have some relationship to the cost of running the building, but it will be limited to the degree that people actually care less about that factor than others in the purchase decision. A tenant may well prefer a period thatched cottage over a brand new purpose built flat, regardless of the energy rating. Undoubtedly if two identical properties are offered for rent at the same rental value and one has a better EPC rating, then tenants may choose the better one. However, in many cases there will be other differences which might have greater influence.

There are wide differences in the number of DEAs available and needed around the regions. Whilst some areas have enough, others, such as London, are very short of assessors. DEAs have to work with an accreditation body for the assessment to be valid. It is not enough to simply do the inspection, the inspection results have to be uploaded to an accredited provider.

### **Results**

Early collation of the EPCs showed that for the larger properties, 4 or more bedrooms, the average rating was band E (A is the best and G is the worst).

*To see an example of an EPC and report use the internet link below*

*[http://www.nher.co.uk/pages/insight/EPC%2005\\_12\\_05.pdf](http://www.nher.co.uk/pages/insight/EPC%2005_12_05.pdf)*

The report will look at the following elements and assess current performance similar to the table below:-

Element	Description	Current performance
Main walls	Uninsulated cavity wall	Poor
Main roof	Pitched 100mm loft insulation	Average
Main floor	Uninsulated solid concrete	Average
Windows	Single glazed throughout	Very poor
Main heating	Mains gas boiler	Poor
Main heating controls	No controls	Very poor
Secondary heating	Flame effect fire	Very poor
Hot water	Uninsulated cylinder	Very poor
Lighting	Low energy in all fixed outlets	Very good

## From the Association

### Section 21 accelerated possession (Court form N5B)

This claim **cannot** be used for rent arrears.

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### Insurance-based Tenancy Deposit Scheme

Tenancy Deposit Solutions recently published some changes to their scheme on their website. The changes are in the form of a 2007 Newsletter at [www.mydeposits.co.uk/pdf/TDS\\_Newsletter-Autumn2007.pdf](http://www.mydeposits.co.uk/pdf/TDS_Newsletter-Autumn2007.pdf)

Those of you in that scheme but without internet access, can contact the SWLA office and **one** copy can be sent to you.

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### The Bailiffs

One of our members has highlighted the apparent reticence of the bailiffs and police to execute an eviction order. Have any other members experienced anything similar? If so please let the office know.

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### Digital switchover

If you have a communal television system in your property there is a detailed technical document on the government's website at [http://www.digitaltelevision.gov.uk/pdf\\_documents/publications/cas\\_Issue122.pdf](http://www.digitaltelevision.gov.uk/pdf_documents/publications/cas_Issue122.pdf)

There is also information at [www.digitaluk.co.uk](http://www.digitaluk.co.uk) on when your area will switch. The west country will begin in the first half of 2009.

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### Did you know?

It is normal practice and written into most Assured Shorthold Tenancy Agreements that at least one months written notice be given by a tenant to their landlord should they wish to end a tenancy agreement. However there is a point of law of which few landlords are aware. **If a tenant elects to leave, they have the right to leave on the last day of the fixed term, without giving any notice.** The fixed term is deemed as coming to a natural end, and there is therefore no requirement for notice to be given. This will only apply if the tenant leaves on that one given day, stated on the Assured Shorthold Tenancy Agreement. It is only when the tenant remains at the property after that date, it then becomes a Statutory Periodic Tenancy. The tenant is then required to give the correct notice in the usual way. Certain advisory bodies such as the CAB or Shelter will inform tenants of this right. Landlords, however, must give at least two months notice by serving a Section 21 notice. To try and avoid this situation it is good practice to write to your tenants two and a half months before the end of the fixed term asking for their intentions. This would give the landlord time to find a replacement tenant and not be left with an empty property.

*Extract from NFRL magazine.*

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### Possession claims on-line

Don't forget that possession claims for rent arrears can be submitted over the internet and costs £100 instead of £150 for the paper-based claim. It is still a requirement that you attend a court hearing in your local court.

The internet address is [www.possessionclaim.gov.uk/pcol](http://www.possessionclaim.gov.uk/pcol)

It has come to light that claims for **possession** only **cannot** be lodged through the on-line claim system.

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### On-line fire information

[www.fire.gov.uk](http://www.fire.gov.uk) is the government website for fire information. It includes landlord responsibilities, home safety and an on-line risk assessment. Answer the questions on the screen to see an overview of the risk assessment. The on-line session is not recorded anywhere.

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### Section 8 service date

Be aware that when serving a section 8 if you hand it to the tenant, then that is the date of service. If you leave it in the letter-box, the following day is the date of service.

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