

# NEWSLETTER

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*'Run by landlords for landlords'*

## From the Chair

### Landlords Under Attack

The recent rash of high profile and restrictive landlord legislation has vastly increased the burden on all of us and has persuaded some members to “cash in” on the current high prices and are selling up.

Interestingly, various recent press reports suggest that the “Buy To Let” market has peaked and is under increasing financial pressure with many recent entrants having insufficient rental income to cover their finance and running costs. In addition, there have been many calls to end the landlords “Tax Perk” of offsetting mortgage interest against rental income. On a personal note, I feel it very unlikely that this will happen, not least, because to do so, would probably affect all businesses in general – not just landlords. The principle of offsetting the costs of running a business against profits is one of the foundations of the tax system.

Others point out that many well-established landlords will buy more property in any periods of property price weakness and the average length of the void period is falling with very high tenant demand and increasing rents.

In general, well-established landlords with relatively low borrowings, a high level of equity and good management will always be well positioned to benefit from the increased rents and high tenant demand currently available. As always, if you watch your costs, plan and run your business well, then you will make a profit – even in periods of adverse market conditions.

### Capital Gains Tax

The recent change of stance from the Government regarding taper relief and the reduced rate of Capital Gains Tax down to 18% will be of enormous benefit to landlords. Unlike other businesses, landlords were not able to benefit from the business taper relief so the new rate will be very welcome and will save us all huge amounts of tax. If you are thinking of selling property, then consider carefully the merits of waiting until after April 5<sup>th</sup> next year to benefit! - The housing market in general seems to be slowing considerably and it remains to be seen what will happen if a large number of landlords all sell after April to benefit from the lower tax rate.

### Another CAB Update

Another very interesting letter was received about how CAB approaches the area of landlords – Full details inside.

### Member Response

Many thanks to all those who responded to our recent email from SWLA Committee Member Bob Usher (our senior statesman) regarding awarded judgements/attachment of benefits – We would have liked to have seen more feedback but that received was very helpful and the SWLA is pursuing this issue through the British Property Federation. Further information will be given as the matter progresses.

### Finally

The Deposit Protection Schemes have issued guidance on the “prescribed information” a tenant requires. Further information inside.

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### In this issue

- From The Chair
- Important Tenancy Deposit updates
- Gas certificate!
- Rent Arrears Protocol
- Buying property with a sitting tenant
- SWLA Form77
- Local Housing Allowance Q & A
- On-Line possession
- Waste collection
- C A B

# SOUTH WEST LANDLORDS ASSOCIATION

## **At last – a price comes down!**

Landlords wanting to repossess their properties for non-payment of rent can now do so more cheaply, by using the online service of Her Majesty's Courts Service.

The service, which launched a year ago, has now cut the cost of its Possessions Claims Online (PCOL) service from £150 to £100.

The facility allows private landlords, and also local authorities, housing associations and lenders, to apply electronically for repossession for non-payment of rent or mortgages.

The 24-hour service allows small and infrequent users, such as private landlords, to fill out their claim online, while frequent users, such as local authorities or housing associations, can link their data system directly into the PCOL interface to automatically input new claims.

If you wish to continue to lodge claims at the local county court, you can still do so but will continue to have to pay £150 for each claim. - [www.possessionclaim.gov.uk/pcol](http://www.possessionclaim.gov.uk/pcol)

### **Possession Claim Online**

#### **Possession Claim Online can be used by:**

Individuals, Solicitors, Government, businesses

#### **who wish to issue a:**

Claim or Warrant

Or certain other processes related to possession claims.

Solicitors who wish to put themselves on record as acting for a Claimant or Defendant within existing proceedings that were issued through PCOL.

#### **Possession Claim Online cannot be used by:**

Vexatious Litigants

Minors (under the age of 18)

A Child or Patient within Part 21 of the Civil Procedure Rules

A Legally assisted person within the meaning of the Legal Aid Act

#### **Examples of who cannot be sued are:**

Government, The Monarchy

#### **Hardware/Software requirements**

#### **To use PCOL, you must:**

Use either a personal computer (PC) running Windows or a Macintosh computer.

Have a working Internet connection.

o Use Microsoft Internet Explorer 5.5 (or later) or Netscape 7.0 (or later) or Mozilla 1.7 (or later).

o Have an Internet browser with JavaScript and cookies enabled and be capable of supporting 56-bit or 128-bit SSL.

Have Adobe Acrobat Reader version 4.0 (or later) if you want to save your claim forms to your computer and print them. You can use the following link to download a free copy of Adobe Acrobat Reader.

#### **How to save and print claim details**

When you are completing forms online and select any function in PCOL (e.g. continue, previous or exit), your work is automatically saved as a draft within your personal homepage online. You can also save information as you work by selecting the Save button when provided to you. When you have submitted a form online and it is accepted by the court, it is stored as a PDF document within the claim event history.

You can also store (save) your submitted forms to your computer and print them by selecting the

specific document from within the claim event history. The printed forms are for your reference only and cannot be accepted by a County Court as an issue request or served on the defendant personally.

If your claim does not meet all of the above requirements you cannot use this service and you should contact your local County Court for advice. You can use the [HMCS CourtFinder](#) to find your local county court.

#### **Is PCOL suitable for your claim?**

*Continued on page 3*

## Gas certificate? Why do I need one...?

This is why.....!

### Landlords Warned to test gas appliances

Two landlords, Philip Preece and Elisabeth Struthers have been fined £2,500 each, with an additional £1,800 costs for contravening The Gas Safety (Installation and Use) regulations 1998, after a mother and two children living at their flat in North Cheam were hospitalised by carbon monoxide poisoning from a gas-powered warm air heater.

The heater had not been inspected or maintained since 1996 and the Health and Safety Executive has cited the case as a real deterrent for landlords who fail in their duties to maintain gas fittings and any flues serving them.

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*PCOL Continued from page 2*

### **Please check that PCOL is suitable for your claim before you start.**

#### **PCOL is suitable if:**

It is brought under Section I of Part 55. It includes a possession claim for residential property by - a landlord against a tenant, solely on the ground of arrears of rent (but not a claim for forfeiture of a lease); or a mortgagee against a mortgagor, solely on the ground of default in the payment of sums due under a mortgage.

It does not include a claim for any other remedy except for payment of arrears of rent or money due under a mortgage, interest and costs.

You have an address in England or Wales where documents can be delivered. All defendants have an address for service in England and Wales.

The claimant is able to provide a postcode for the property to be recovered.

You have an e-mail address.

If your claim does not meet all of the above requirements you cannot use this service and you should contact your local County Court for advice. You can use the [HMCS CourtFinder](#) to find your local county court.

It is advisable that before you start making a claim online, you have the following information available: Full name and address of the person(s) you wish to make a claim against, a schedule of the arrears of rental/mortgage payments (full details of the requirements for the schedule of arrears are included in the [Civil Procedure Rules Practice Direction](#) that governs PCOL), facts relating to the claim e.g. efforts you have made to reach agreement with the defendant to resolve the arrears.

Once you submit your request for the issue of a claim/warrant to Her Majesty's Courts Service, the cost of processing the request will be incurred. Full details of the fees payable for issue of process are contained within the [EX50 leaflet](#). All claims received are processed upon receipt it is therefore not possible that the court will be able to stop a claim from being issued once the claim has been submitted online.

Any refund of fees is entirely at the discretion of the Court Manager.

Keep in mind also that any order for arrears or costs has a **6-year** life, so if you later find the tenant is employed you can still pursue them.

# **SOUTH WEST LANDLORDS ASSOCIATION**

## **Rent arrears pre-action protocol**

*At the moment* this only applies to social landlords, local authorities, housing associations, but is a taste of what may be coming to the private sector. We would like member feedback on how easy or how hard it is to contact their local Housing Benefit department.

This protocol applies to residential possession claims by social landlords (such as local authorities, Registered Social Landlords and Housing Action Trusts) which are based solely on claims for rent arrears. The protocol does not apply to claims in respect of long leases or to claims for possession where there is no security of tenure.

The protocol reflects the guidance on good practice given to social landlords in the collection of rent arrears. It recognises that it is in the interests of both landlords and tenants to ensure that rent is paid promptly and to ensure that difficulties are resolved wherever possible without court proceedings.

Its aim is to encourage more pre-action contact between landlords and tenants and to enable court time to be used more effectively.

Courts should take into account whether this protocol has been followed when considering what orders to make. Registered Social Landlords and local authorities should also comply with guidance issued from time to time by the Housing Corporation and the Department for Communities and Local Government.

### **Initial Contact**

The landlord should contact the tenant as soon as reasonably possible if the tenant falls into arrears to discuss the cause of the arrears, the tenant's financial circumstances, the tenant's entitlement to benefits and repayment of the arrears. Where contact is by letter, the landlord should write separately to each named tenant.

The landlord and tenant should try to agree affordable sums for the tenant to pay towards arrears, based upon the tenant's income and expenditure (where such information has been supplied in response to the landlord's enquiries). The landlord should clearly set out in pre-action correspondence any time limits with which the tenant should comply.

The landlord should provide, on a quarterly basis, rent statements in a comprehensible format showing rent due and sums received for the past 13 weeks. The landlord should, upon request, provide the tenant with copies of rent statements in a comprehensible format from the date when arrears first arose showing all amounts of rent due, the dates and amounts of all payments made, whether through housing benefit or by the tenant, and a running total of the arrears.

a) If the landlord is aware that the tenant has difficulty in reading or understanding information given, the landlord should take reasonable steps to ensure that the tenant understands any information given.

The landlord should be able to demonstrate that reasonable steps have been taken to ensure that the information has been appropriately communicated in ways that the tenant can understand.

b) If the landlord is aware that the tenant is under 18 or is particularly vulnerable, the landlord should consider at an early stage -

whether or not the tenant has the mental capacity to defend possession proceedings and, if not, make an application for the appointment of a litigation friend in accordance with CPR 21;

whether or not any issues arise under Disability Discrimination Act 1995; and

in the case of a local authority landlord, whether or not there is a need for a community care assessment in accordance with National Health Service and Community Care Act 1990.

If the tenant meets the appropriate criteria, the landlord should arrange for arrears to be paid by the Department for Work and Pensions from the tenant's benefit.

The landlord should offer to assist the tenant in any claim the tenant may have for housing benefit. Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that he has -

# SOUTH WEST LANDLORDS ASSOCIATION

- provided the local authority with all the evidence required to process a housing benefit claim;
- a reasonable expectation of eligibility for housing benefit; and
- paid other sums due not covered by housing benefit.

The landlord should make every effort to establish effective ongoing liaison with housing benefit departments and, with the tenant's consent, make direct contact with the relevant housing benefit department before taking enforcement action.

The landlord and tenant should work together to resolve any housing benefit problems.

Bearing in mind that rent arrears may be part of a general debt problem, the landlord should advise the tenant to seek assistance from CAB, debt advice agencies or other appropriate agencies as soon as possible.

## **After service of statutory notices**

After service of a statutory notice but before the issue of proceedings, the landlord should make reasonable attempts to contact the tenant, to discuss the amount of the arrears, the cause of the arrears, repayment of the arrears and the housing benefit position.

If the tenant complies with an agreement to pay the current rent and a reasonable amount towards arrears, the landlord should agree to postpone court proceedings so long as the tenant keeps to such agreement. If the tenant ceases to comply with such agreement, the landlord should warn the tenant of the intention to bring proceedings and give the tenant clear time limits within which to comply.

## **Alternative dispute resolution**

The parties should consider whether it is possible to resolve the issues between them by discussion and negotiation without recourse to litigation. The parties may be required by the court to provide evidence that alternative means of resolving the dispute were considered. Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored.

The Legal Services Commission has published a booklet on 'Alternatives to Court', CLS Direct Information Leaflet 23 ([www.clsdirect.org.uk/legalhelp/leaflet23.jsp](http://www.clsdirect.org.uk/legalhelp/leaflet23.jsp)), which lists a number of organisations that provide alternative dispute resolution services.

## **Court proceedings**

Not later than ten days before the date set for the hearing, the landlord should -

- provide the tenant with up to date rent statements
- disclose what knowledge he possesses of the tenant's housing benefit position to the tenant.

The landlord should inform the tenant of the date and time of any court hearing and the order applied for. The landlord should advise the tenant to attend the hearing as the tenant's home is at risk. Records of such advice should be kept.

If the tenant complies with an agreement made after the issue of proceedings to pay the current rent and a reasonable amount towards arrears, the landlord should agree to postpone court proceedings so long as the tenant keeps to such agreement.

If the tenant ceases to comply with such agreement, the landlord should warn the tenant of the intention to restore the proceedings and give the tenant clear time limits within which to comply.

If the landlord unreasonably fails to comply with the terms of the protocol, the court may impose one or more of the following sanctions

- an order for costs
- in cases other than those brought solely on mandatory grounds, adjourn, strike out or dismiss claims.

If the tenant unreasonably fails to comply with the terms of the protocol, the court may take such failure into account when considering whether it is reasonable to make possession orders.

***Has this been drawn up by anyone who knows the practicalities of dealing with housing benefit etc?***

Taken from the Department of Work and Pensions website.

# SOUTH WEST LANDLORDS ASSOCIATION

## Buying a property with sitting tenants.

By Tessa Shepperson Solicitor and Editor of [www.landlordlaw.co.uk](http://www.landlordlaw.co.uk)

Investor landlords will often purchase a property with tenants already in situ. What should the purchaser look out for, and what documentation should he ask for from the vendor?

It is essential that as much information as possible is obtained for every tenancy in the property. In particular you need to know (and have proof of) the date when the tenant(s) first went into the property, not just the date of the last tenancy agreement they have been given. You will want all your tenants to be assured shorthold tenants if possible, because then you will have the right to evict them if necessary (after following the proper procedure of course).

If the tenants first went in before 15th January 1989 you should think very carefully before buying the property, because these will almost certainly be 'protected' tenants under the Rent Act 1977. This means that not only will it be almost impossible to evict them, but also that they will be subject to the 'fair rent' regime. The only rent you will be able to charge is that set by the Rent Officer, which may be lower than you consider reasonable.

If the tenants first went in after 15th January 1989 but before 28 February 1997, then they will probably be assured shorthold tenants, but you need to check to see that a properly drafted 'section 20' notice has been served on them, otherwise they will only be assured tenants, and again you will find it difficult to evict them, should this be necessary. Note that the section 20 notice will be of no effect if it was served on the tenant after he started the tenancy. It is essential therefore that you have proof that it was served at least one day before the tenancy commenced.

If the tenants first went in after 28th February 1997 then they will usually be assured shorthold tenants.

If the tenancy is a company let, check at Companies House to see that the tenant is a genuine company. You can do a search for free online at the Companies House web-site. Company lets cannot be ASTs, neither can lettings where the rent is over £25,000 pa. These lets will be subject to the 'common law' where slightly different rules apply.

So far as documentation is concerned, you must obtain the original tenancy agreement, and the current tenancy agreement. You should also have copies of all notices served and proof of service. If the tenancy is a Rent Act protected tenancy, you should ask if the rent is registered, and if it is, obtain a copy of the rent register. This will tell you the current rent and give useful information about the tenancy.

To be on the safe side, it is probably a good idea to get a statutory declaration from the seller in respect of each tenancy, confirming the date the tenant first went into the property and giving details of all notices that have been served, exhibiting copies, and providing proof of service. Even if the tenancy started after 28 February 1997, it is a good idea to have a statutory declaration confirming this, and also that no notice has been given to the tenant stating that his tenancy will not be an AST. Remember that if you have problems with this tenant and he starts making claims about notices allegedly served (or not served) on him by his former landlord, you will not be able to prove otherwise if the seller is unobtainable. The seller may also be unwilling to co-operate once he has sold the property to you.

You can find out more about buying a property with sitting tenants, and on landlord and tenant law generally, from Landlord-Law at [www.landlordlaw.co.uk](http://www.landlordlaw.co.uk).

## 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 will 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 be reviewed on an annual basis. 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 ie 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.

### 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) every other adult who is not part of a couple
- c) any other adult aged 16 or over
- d) any two children of the same sex
- e) any two children regardless of sex under age 10
- f) any other child

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 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.)

Shared room rate £43.50, 2 Bedroom rate £62.50, 3 Bedroom rate £80.00, 4 Bedroom rate £87.50,  
5 Bedroom rate £90.00, 6 Bedroom rate £97.50

#### 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.

#### 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 implemented to all tenants receiving that BRMA / LHA rate.

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## **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.

## **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 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.

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# **SOUTH WEST LANDLORDS ASSOCIATION**

## **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 is not appealable.

### **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 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)

For the full Q&A document use this website link

[www.dwp.gov.uk/housingbenefit/lha/LHA-national-landlord-QA.pdf](http://www.dwp.gov.uk/housingbenefit/lha/LHA-national-landlord-QA.pdf)

## Important Tenancy Deposit Updates

It has recently been revealed that the two principal deposit protection schemes will no longer send out the prescribed information to the landlord or tenant.

Apart from which scheme protects the deposit, etc., the prescribed information includes information for the tenant about the dispute resolution process. It seems that the landlord has the responsibility to provide this information to the tenant, and therefore the landlord should not assume that it's been sent.

The information is contained within three documents available on the two websites.

### Tenancy Deposit protection Solutions (insurance-based)

Quick reference for Landlords

<http://www.mydeposits.co.uk/landlords/Scheme%20Rules%20Quick%20Guide%20for%20Landlords.pdf>

Information for tenants

<http://mydeposits.co.uk/tenants/Information%20for%20Tenants.pdf>

### Deposit Protection Service (custodial)

Terms and conditions

<http://www.depositprotection.com/WebContent.axd?docid=d69a5f8e-fee8-4166-a539-72a788fdee8d>

For those members who do not have internet access, you should ask the respective call-centre to send you the information.

Further, please note that where a Single Claim is being made, the required Statutory Declaration can also be sworn by a court officer in the same way that an affidavit can be sworn. This is in addition to what is in the Scheme rules where it states that the Declaration must be sworn by a magistrate, commissioner for oaths, or a solicitor.

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## Another CAB update

Further to Austin Hawkins letter about the CAB, member John Symington adds an interesting postscript.

Date: Wed, 26 Sep 2007

I read the letter regarding CAB in your last Newsletter, although I do not have experience of tenants using CAB, my sister in law was a volunteer with them and received their training.

She stated that during her training on Housing and the Tenancy Acts, all lectures were given by Shelter or a Shelter trained person.. At the time she worked for CAB nowhere within their documentation were the rights of Landlords considered, the whole training focused on Tenants Rights and the landlord's action to see if he could be sued for harassment. Additionally they were specifically taught to look for mistakes in the lease to see if it could be turned to the tenants advantage.

At the time she worked for CAB, she was told to use Shelter as an advice line and if they had any problem that they could not resolve to pass it on to Shelter.

At the time of her training, my sister in law owned a rental property. At the end of her lectures she stated her view to the lecturer that he considered all landlords "scum".

John Symington

# SOUTH WEST LANDLORDS ASSOCIATION

## Plymouth City Council's Landlord Permit Scheme

### Aims of the scheme:

- To control the illegal deposition of waste on the highway by students / landlords at the ends of terms
- To respond to calls by landlords to introduce a system whereby they can get excess waste removed
- To cover the additional costs of removing this waste by introducing a registration fee for landlords

### Methodology

- Landlords who wish to participate in the scheme will be asked to register with the council by filling in a form (LPS1)
- Landlords may register several properties at the same time using the LPS1 form, but a registration fee will be charged for **each property**
- Collections of waste will take place two weeks before and two weeks after the end of the autumn and spring terms
- Collections of waste at the end of the summer term will run from 15<sup>th</sup> May to 15<sup>th</sup> July
- Landlords wishing to have waste collected must phone in at least 48 hours (i.e. 2 clear working days) before they want to have the waste removed
- Calls will be taken by the Call Centre on Plymouth 668000
- The council will give landlords a rough estimate (a.m. or p.m.) of when the waste will be collected. landlords / tenants will **only** be permitted to put this waste out for collection on the allotted day
- The council will generally guarantee to collect this waste within 48 hour of any request, however collections will be limited to 30 properties a day and if this number has been reached on any given day, the collection will be booked into the next available free slot in the following days
- Collections will operate from Monday to Thursday. If a request for collection is received on Wednesday then it will be collected on the following Monday. Requests for collection received on Thursdays and Fridays will also be collected on the following Monday unless the 30-property limited has been reached. Collection will then be arranged on the next available day that space is free
- Landlords may request several collections of waste from the same property over the period that the collections are running
- Landlords who register part way through the academic year will be invoiced proportionally.

### Permitted waste and volumes

- Only properly secured bags of household waste, soft furnishings (e.g. cushions, duvets) and small electrical appliances such as TVs, stereos and kettles etc. will be taken
- No limit will be placed *per se* on the volumes of waste defined above per collection; however the council retains the right to place limitations at a future date if it becomes necessary to do so
- the following waste types will not be collected under any circumstances;
  - Large appliances such as cookers, fridges, washing machines etc
  - Furniture
  - Builders or DIY type waste such as plaster boards, rubble, slates etc
  - Bathroom or kitchen units
  - Any hazardous materials such as asbestos, hypodermic needles, clinical waste, chemicals and paint
  - Vehicle parts including tyres and batteries

### Costs

Yearly registration will cost £45 + VAT per property  
Registration for part year will be charged as below

<b>Registration received</b>	<b>Cost (per property)</b>
<b>Before start of spring term</b>	<b>£45</b>
<b>After start of spring term but before start of summer term</b>	<b>£30</b>
<b>After start of summer term</b>	<b>£15</b>

Registration on the scheme will be voluntary but the council would like the scheme to be adopted as a voluntary code of practice. The council's Public Protection Service will actively pursue persons found to be putting out waste illegally. A scheme for non-student landlords is proposed and details will be supplied as soon as adopted.

## SWLA Stationery

SWLA stationery can be revised without notice, so make sure that you check the issue date in the bottom right-hand corner with what is on the SWLA website.

This applies equally to Court papers so make sure that you have the latest issue at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk) or contact the office at 01752 510913 for advice. This is particularly important as Plymouth Court was recently found to be handing out obsolete repossession documents.

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### **A sample "Scale of Charges" is now available on the stationery page of the SWLA website.**

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Don't forget that you can search the Form-77 database of "Problem Tenants" in the members area of our website. Make sure that the surname is entered in capitals. The date of birth can be dd-mmm-yyyy or dd/mm/yy . Enter the NI number in blocks of two characters. If you have difficulty, telephone the office where a printed copy can be checked by the office manager.

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Another example of Plymouth City Council's advancements is the voice recognition system employed by the General Enquiries section.

When the call is answered, any existing details connected to your name will be automatically displayed to the operator.

The BBC Spotlight programme recently highlighted the voice stress analysis system used in the processing of telephoned benefit claims. Trained operators use the system to assess potential fraud.

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### **£90 million banked with Deposit Protection Service**

A massive £90 million worth of tenancy deposits are being held by the Deposit Protection Service, the custodial scheme run by Computershare into which landlords can place deposits at the start of each tenancy. Many

landlords would previously have used this money as working capital.

The value of deposits registered with the other two approved schemes, which are insurance-backed, is not known.

Since April, it has been illegal to handle tenancy deposits unless the landlord (or agent) belongs to one of the three approved schemes. It is thought that the custodial scheme has by far the greatest market share among landlords. The £90 million pool is banked with Halifax Bank of Scotland and is being invested.

Kevin Firth, the DPS's project manager, said that 50,000 landlords have so far lodged their deposits with his scheme, plus 6,500 letting agents - including some large chains.

So far, 121,000 tenants' deposits are being held, and the average deposit is £750. The DPS is taking 1,000 new deposits a day, 90% of them online. In September alone, more than 30,000 deposits were taken.

So far, there have been over 2,000 claims processed which Firth said was higher than anticipated, given that most Assured Shorthold Tenancies which are running for six months since the introduction of compulsory deposit protection in April will not end until this month (October). Firth believes that 8,500 AST tenancies are due to end shortly, so claims could rocket.

Of the 2,000 claims, only three have proceeded to dispute resolution but none has yet been to adjudication.

Interestingly, of the 2,000 claims, 400 were 'single' claims, whereby either a landlord or tenant can ask the DPS to settle the deposit in the absence of the other. The figure of 400 is far higher than Firth had anticipated.

It would also appear that almost all of the 400 claims is by a landlord after a tenant has left, owing the last month's rent. Landlords can only recover the money by filling in a Statutory Declaration from the scheme and getting it witnessed by a solicitor.

(SWLA - see also inside where a Statutory Declaration can be sworn by a court officer)

*From the Residential Landlords Association Newsletter*

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The Association provides assistance and advice. However, the Association does not hold itself out as providing specialist legal advice and therefore whilst written and oral advice is given in good faith, no responsibility can be accepted by the association, its officers or members for the accuracy of its advice, nor shall the Association be held liable for the consequences of reliance upon such advice.