

Delivering the Local Housing Allowance:

Some Pointers from the Pathfinders

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	<p style="text-align: center;">Evaluation of the Local Housing Allowance</p>
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About this note

This Note was drawn up at the request of the Department for Work and Pensions, who were keen to distil some of the key findings from the work evaluating the delivery of the Local Housing Allowance¹ into a form that would assist local authorities in implementing the LHA on roll-out. The approach taken here stops short of a 'Good Practice Guide' in the normal sense. The evaluation revealed a wide range of organisational and operational practices, and some important differences in procedural mechanisms among the nine Wave One Pathfinders². Indeed, since the Pathfinders were chosen to be diverse in terms of their location, caseload size, class of authority and local housing market, it would be surprising if a simple set of good practice messages was to emerge³.

The thread that links the experiences of the Pathfinders is that, over the two years of implementation, they all successfully introduced the new regime and in doing so faced a number of issues which were common to all of them. These issues varied in significance and intensity between the Pathfinders, and their responses to them frequently differed. It is important for authorities preparing their Benefit Service for LHA roll-out to identify the main issues they are likely to face during this period and to get an indication of some of the ways the Pathfinders found it appropriate to respond. This Note tries to achieve this.

Three broad areas are covered here. The first is the issue of claimants' access to bank accounts, which becomes particularly important under the LHA, but which is also an important part of the national policy of increasing financial inclusion for all benefit claimants. Secondly, the Note examines some of the procedural considerations of how landlords, many of whom have been used to receiving their tenants' HB entitlements directly, can be kept 'on board' during the processing of a claim. Finally, the difficult but very important area of the Benefit Service's role in assessing and reviewing the case of claimants who may be vulnerable and/or in arrears is outlined and some key considerations for the Service are highlighted.

Claimants access to bank accounts

The issue

If claimants are receiving the LHA direct, then they need to have some means of accessing their entitlement, given that it is not paid in cash. This question of access becomes particularly important under the new regime where a much greater number of tenants than previously are likely to be receiving direct payment. Hence, the importance attached to LHA claimants having bank accounts. Paying the LHA directly into a bank account yields efficiency benefits for HB administration and can benefit claimants by saving them the financial and other costs involved in cashing their entitlements and then subsequently arranging to

1 Available as *Local Housing Allowance Final Evaluation: Implementation and Delivery in the Nine Pathfinder Areas; Local Housing Allowance Evaluation no 10*; Leeds, Corporate Document Services for the Department for Work and Pensions (2006) or at the DWP website: <http://search2.openobjects.com/kbroker/dwp/dwp/search/search.isim?sr=0&nh=10&cs=iso-8859-1&sc=dwp&sm=0&mt=1&to=0&ha=1092&qt=Local+Housing+Allowance+Evaluation>

2 The Wave One Pathfinder authorities were Blackpool, Brighton & Hove, Conwy, Coventry, Edinburgh, Leeds, LB Lewisham, NE Lincolnshire and Teignbridge.

3 The evaluation reports on the implementation of the LHA in each individual Pathfinder are available at the above website (see footnote 1).

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hand over the rent to their landlord. More generally, possession of an account can be argued to improve financial inclusion by bringing claimants within the mainstream financial system.

This is one of the main reasons why DWP, through the work of Jobcentre Plus, for example, are actively encouraging all benefit claimants to open accounts into which their benefits can be paid. This is likely to increase further the number of LHA claimants who already have accounts when the new regime is rolled out.

Which claimants have accounts?

The first issue for HB administration is knowing whether or not those LHA claimants who have previously had their HB paid to their landlords, or who have received direct payment in the form of a cheque sent to them, have an account into which their entitlement can be paid. The significance of this is likely to vary across authorities. In the Pathfinders, in the earliest stages of LHA implementation, just under two-thirds of direct payment recipients received their entitlements by Automated Credit Transfer (ACT) but among these authorities this ranged from a minimum of zero, where the authority did not at that time offer this facility, to a maximum of 84 per cent. Even where the proportion of claimants receiving Housing Benefit (HB) in this way is relatively high, there are likely to be a significant number of claimants who will be receiving the award for the first time and whose position in respect of having an account is unknown to HB administrators.

It needs to be recognised at the outset that it is highly unlikely that in any authority all direct payment recipients will ultimately provide account details and receive their entitlements by ACT. Some claimants will be unable or not wish to open a bank account because of their financial history or personal difficulties, while others will have an account but choose not to use it, because of previous or current financial difficulties or because they prefer to receive their LHA cheques themselves. A survey of claimants receiving their entitlements by cheque, carried out by the Blackpool Pathfinder, found that, of the 830 claimants who replied, 69 per cent indicated that they had a bank account but preferred to receive the cheque and either pay it into their account themselves or cash it in some other way.

In this respect there is an important distinction to be made between those claimants who are entitled to direct payment but who cannot open an account and those who choose not to open an account, or choose not to use an existing one. In the Pathfinders the first of these groups were normally treated under the vulnerability provisions, albeit often only temporarily. The other two groups of claimants are exercising a choice. If sending the LHA cheque to the tenant's address does not lead to payment difficulties or problems with arrears, then there is little that the Benefit Service could or should do about this, even though the process is more costly for HB administration, and perhaps sometimes for the claimant.

Nevertheless, the Pathfinders' experience suggests that requesting bank account details, or confirmation of those details, from claimants, accompanied by the provision of information on the types of account available and how they may be opened can meet with some success in encouraging the use of accounts. This can be undertaken through mailshots at a number of stages of the LHA implementation process:

- as part of a general mailshot to all claimants prior to implementation as part of the information explaining the workings of the new regime

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- as a targeted mailshot at or during implementation sent solely to those claimants receiving direct payment for whom HB administration has no bank account details, followed by
- a further targeted mailshot where details have still not been provided requesting the information or an explanation why the claimant does not wish to provide this.

In addition, where claimants approach the authority with queries about bank accounts or about the LHA more generally there is an opportunity for appropriately briefed customer service officers (or equivalent) to provide information on bank accounts and/or to refer the claimant to those within or outwith the authority who can further assist them in this respect. Where, in what appears to be an increasing number of authorities, the cheque cashing facility is being withdrawn, officers are likely to find that requests for such information will become much more common.

Coventry provides one example of a Pathfinder that used a number of strategies to discover whether an LHA claimant has an account and to encourage its use for their entitlements. As in other Pathfinders, where the claimant does not have an account they are encouraged to open one. In the authority:

- a mail shot was undertaken to claimants, not receiving payment by ACT, encouraging them to open an account (or use an existing one)
- claimants approaching Customer Enquiries or Cashiers to cash their LHA cheque (a service now withdrawn) were referred to the Money Advice Service (MAS)
- the MAS worker telephoned claimants who did not have an account giving them information and advice
- the worker offered one-to-one appointments for those having difficulty opening an account.

At least partly as a result of these efforts, the percentage of LHA claimants receiving direct payment by ACT increased from 58 per cent to 72 per cent in Coventry over the course of the Pathfinder period. The finding of the LHA Evaluation that at the end of the two year Pathfinder period the lowest percentage of direct payment recipients receiving their entitlements by ACT was 66 per cent and that in two authorities this was 90 per cent or more indicates that there will be scope for many authorities to increase claimants' use of bank accounts if this area of delivery is given appropriate priority.

Opening accounts: information and assistance

DWP have provided an information pack for the use of tenants, and those advising them, concerning the types of bank account available and the requirements for opening them. The initial information that these contained had to be amended in a number of instances by the Pathfinder authorities in the light of the experience of some claimants attempting to open accounts and as a result of the contact made with banks locally, in line with DWP's recommended practice, in the run up to the implementation of the LHA. These contacts revealed that the requirements and willingness of high street banks to open basic accounts at the local level frequently differed from that expected on the basis of government discussions with those banks nationally. Indeed, the requirements often seem to vary between branches of the same bank locally and between bank employees in the same branch.

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Where banks will not agree to open an account on the basis of a person's credit history, there is little that HB administration can do. Rather, the task of assisting such claimants falls to MAS workers within the authority or in independent advice services who are better equipped to deal with the often very complex financial problems that these individuals face. It is therefore essential that the arrangements for referring, or recommending claimants to self-refer, to such services are laid down clearly at an early stage so that those in the authority having first point of contact with LHA claimants who present with bank account and/or other financial difficulties can refer them on quickly and correctly. However, a clear role for those within HB administration, often, in the Pathfinders' experience, in conjunction with other advice agencies, is to clarify with local banks what their requirements are, so that claimants can be accurately informed of these at their point of transfer to the new regime.

Many of the difficulties that claimants experience appear to stem from banks' ID requirements for opening accounts. Some require photo ID – for example, a new style driver's licence or passport – which some claimants do not possess. While proof of address and a utility bill(s) prove sufficient ID to meet some banks' requirements, some claimants living in Houses in Multiple Occupation (HMOs) where the landlord pays these bills cannot provide this. Some banks will accept an HB, or other benefit award, letter, as a proof of identity while others will not – indeed, although a current benefit book or giro would be accepted as one document of verification by some banks, these are becoming rarer now that benefits are increasingly paid into accounts.

Contact with local banks prior to and during implementation/claimant transfer is crucial in order to establish these requirements. To eliminate the 'mixed messages' that can arise from dealing with different personnel in the same bank, one valuable point of practice arising from the Brighton & Hove Pathfinder was the agreement with local banks that they would each designate a liaison officer who would handle enquiries from HB administration and the advice services about banks' requirements in general and in individual cases. Where the bank cannot open an account for a particular claimant, the liaison officer would agree to provide a letter to that effect; this assists HB administration with their vulnerability decisions.

Claimants' management of bank accounts – is there a role for HB administration?

The evaluation of the LHA found that by the end of the Pathfinder period the great majority of LHA recipients had been able to open bank accounts, or already had bank accounts prior to the introduction of the scheme. However, one issue that had arisen that was concerning those involved with claimants was the ability of some claimants to manage these accounts once opened.

In some cases the problem appears to particularly affect longer term claimants who, unused to receiving payments for rent in any case, were having problems in managing new bank accounts for rent payment purposes. In other cases, the problems stem from the simple fact that claimants are on a low income and thus have little financial cushion to protect them should anything go wrong with their account management.

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This is an issue for benefit recipients more widely, as the Citizens Advice Bureaux's (CAB) report Banking Benefits (CAB, 2006) has confirmed. Assisting LHA claimants (and others) with financial problems clearly falls within the remit of those with expertise in this area, such as the CAB/MAS, rather than those in HB administration concerned with the delivery of the award. However, where this does impact on delivery is when part of the problem of managing accounts arises from the payment cycle for the LHA, which is normally fortnightly, being different from the rent payment cycle, which may be weekly, four weekly or per calendar month. This is not peculiar to the LHA, of course, but can give rise to budgeting problems where the claimant has little experience in managing receipts into, and payments out of, bank accounts and where a claimant's standing order for rent payment does not match with the actual receipt of their LHA.

Edinburgh did advise claimants to leave a few days between the expected receipt of the LHA and the date of the standing order for their rent payment, since it could not always be guaranteed that the LHA payment would arrive on time. Another Pathfinder authority, Conwy, attempted to at least partly avoid these problems continuing with cheque cashing facilities longer than most Pathfinders, thus reducing the need for bank accounts, and by paying HB entitlements weekly. While bank account problems were not the main reason for introducing this latter arrangement, it is apparently popular with claimants and many landlords, although some HB officers in the authority have expressed concerns over the additional resource costs that a weekly cycle generates.

There are occasions where problems or inefficiencies in HB delivery can exacerbate claimants' bank account and payment problems. For example:

- Basic bank accounts do not have overdraft facilities so where LHA payment is delayed or suspended serious problems can arise. It also does not appear unusual for claimants to forget to cancel or suspend their standing orders in these circumstances and to be penalised financially by their banks as a result.
- LHA payments can be 'frozen' in tenants' bank accounts because of unauthorised overdrafts and bank charges resulting from standing orders and LHA receipts not being synchronised. It is particularly galling for those concerned when these cheques have been paid in error directly into tenants' accounts even though HB administration has been informed that previous rent payments had been missed because of overdraft problems.

The larger number of claimants receiving direct payment under the LHA and using bank accounts to access them reinforces the need for HB administration to deliver the benefit in a timely and efficient manner. Based on the Pathfinder experience, some steps that authorities might consider in the context of the new regime are:

- Clearly flagging up on their IT systems tenants who have previously had their LHA paid into their account but have requested that it should no longer be so paid.
- Where banks have LHA liaison officers, informing those officers when delivery problems mean that a significant number of LHA payments have been delayed. This will enable these officers to advise or assist their customers as to how charges for unauthorised overdrafts might be avoided, or, depending on the particular bank's policies, may result in a suspension of charges in such instances. Note that for reasons of data protection and privacy, it would be inappropriate for HB administrators to be proactive in informing banks of delays in individual cases.

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- Where interventions or changes of circumstances lead to a delay or suspension of payment in individual cases, authorities could include a standard 'warning' in letters to claimants. This would be to the effect that if the claimant pays their rent by standing order or direct debit then they should contact and seek the advice of their bank as to how these should be dealt with in these instances.

Keeping landlords informed

The issue

Under previous arrangements, the payment of a claimant's HB entitlement to the landlord, either at the claimant's request or as a result of arrears was not uncommon. Among the Pathfinders at the start of the LHA implementation period, between 40 per cent and 80 per cent of HB payments were made to landlords. As a result, these landlords were both aware of which of their tenants were receiving HB and immediately aware of any delays or problems with its delivery. Under the LHA there is no reason in principle why the great majority of landlords should be aware of whether or not their tenants are receiving HB or, again in principle, why they should know of the reasons for any delays in claim processing or payment.

However, the authorities, of which HB administration is a part, and many HB officers themselves, see maintaining tenancies and, through this, increasing claimant welfare and reducing homelessness as an important duty. 'Unexplained' delays in receiving rent payments can threaten these tenancies. Further, under direct payment, HB officers are almost wholly reliant on landlords informing them that rent payments are being missed so that having some lines of communication between landlords and the administration are important.

This becomes even more important when set in the context of the reaction of many landlords to the new scheme itself. Landlords – even where this is only a vocal minority – are often hostile to the LHA, at the outset at least, and much of their concern centres on direct payment and its implications for the security of their rental income. It is for this reason that DWP has encouraged increased contact and discussion with local landlords to which the Pathfinder authorities responded through the increased use of Landlord Forums, newsletters and, in some cases, dedicated helplines for landlords through which HB queries can be handled.

If landlords concerns about the LHA are to be mitigated, and communication with them is particularly important in the case of some individual clients, then they need to be brought within the new regime's group of stakeholders. Specifically in terms of facilitating HB delivery, there are three areas of pointers for practice arising from the Pathfinders' experience. These are discussed in what follows.

Information about a specific claim

As noted, many landlords are used to receiving information on the progress of, or problems with, a tenant's claim when the landlord is expecting to receive the HB payment. Where, under the previous regime, a claimant asked for the payment to be made to the landlord it could very reasonably be argued that, even if only implicitly, this enabled HB officers to respond to requests for information about the claim's progress from the landlord.

However, the presumption of direct payment under the LHA would imply that the landlord has no automatic rights to such information. This led to difficulties in some Pathfinders where some landlords believed that they had a right to information about their tenant's claim while HB administrators felt they had an obligation under data protection legislation to maintain the claimant's privacy unless prior permission had been given for disclosure. This led to some difficult exchanges when officers refused information and advised the landlord to speak to the tenant directly which did little to endear the new regime to the landlord.

In other authorities individual officers appear to have worked round the absence of explicit permission from the claimant to disclose information to the landlord by stressing, when asked, that they could not discuss an individual claim or acknowledge its existence while indicating that, for example, 'many claims' were delayed because full information had not been provided or all claims were delayed due to IT problems. However, adopting such an approach does not constitute a workable protocol or provide adequate guidance for individual officers faced with such information requests.

Most Pathfinders have attempted to mitigate this problem by including a section on the LHA claim form asking for the claimant's permission to inform their landlord of the progress of the claim if the landlord requests such information. Many claimants, particularly those with a history of making such claims, appear to sign or 'tick the box' as a matter of course. This may be because they are less concerned about their privacy and more concerned in having their landlord's support in the case of problems with the claim. One authority, in the early stages of LHA implementation at least, requested claimant's permission in writing, separate from the claim form itself, but this seems a rather unnecessary refinement and additional burden on both claimant and staff.

The Pathfinders' experience suggests that:

- A request for permission for HB officers to keep the landlord informed of the claim's progress, when asked, should be incorporated as standard on the LHA claim form. This should make clear that the claimant's household and financial circumstances will not be discussed with the landlord, but that there are circumstances where HB administration may need to contact the landlord even where permission to discuss the progress of the claim has not been granted. Box A gives an example of such a request for permission.

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Box A: Information Sharing Agreement

Sharing information with your landlord could help us deal with your claim more quickly and reduce the risk of you falling behind with your rent because of your claim being delayed. We may need to confirm information with your landlord before we can make a decision on your claim, for example, the start date of your tenancy. In these circumstances, we can contact your landlord without your permission. Under the Data Protection Act 1998 we need your permission to discuss anything else.

If you give us permission, we would be able to tell your landlord whether:

- you have claimed Housing Benefit;
- we have made a decision on your claim;
- we have made a payment to you; or
- we need more information to make a decision on your claim, and what that information may be.

We will not give your landlord any information about:

- your personal or household circumstances; or
- your financial circumstances.

You can withdraw your permission at any time.

It will not affect your claim if you do not give us permission to discuss your claim with your landlord. If you want to give us your permission to discuss your claim with your landlord, please sign below.

I give XXX Council permission to share my information about the progress of this Housing Benefit claim with my landlord or their nominated representative.

- Where the request is not granted – for example, the box is not ticked or, where allowed for, a negative response is indicated – the reasons for this should be checked with the claimant. This is important since the claimant may simply have missed the request in error or may have misunderstood the sort of information which would be passed on to the landlord.

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- When the form is received the response to this request should be logged onto the system. This should be checked automatically before responding to any query from the landlord, should one be forthcoming. This is of great importance since in one instance among the Pathfinders a case was brought against HB administration under the Data Protection Act on the grounds that information had been given to a landlord where the tenant had indicated that they did not wish officers to respond to such requests.

It should be emphasised that in the experience of the Pathfinders relatively few problems have arisen in this area. Most landlords know whether their tenants are receiving the LHA – primarily because most claimants have told them – and while some claimants quite naturally do not want their personal details shared with others, the interests of the landlord and the claimant are identical in wanting to have the claim processed and paid as quickly as possible.

Dealing with vulnerability and arrears

The issue

Decision making in cases where a claimant is, or is alleged to be, vulnerable and thus should not normally receive their entitlement direct, is a new responsibility for the Benefit Service under the LHA. DWP guidance indicates that authorities have discretion to make payments to the landlord where the claimant is likely to have difficulty in managing their affairs or it is improbable that they will pay their rent, perhaps on the basis of their past (non-) payment history. Further, the regulations still require that the award is paid to the landlord where arrears have been accrued to the value of eight weeks rent or more, an occurrence which in itself could be taken as an indication that the claimant is having difficulty managing their affairs and/or that it is improbable that they will pay their rent.

In some of the Wave One LHA Pathfinders the responsibility for decisions as to 'vulnerability', a term often used in practice to cover all cases where payment might or should be made to the landlord, and the discretion that is allowed for under the regulations was not particularly welcomed by senior officers at the outset. Some argued that making payment decisions in the light of an individual's very personal circumstances was not a job for which HB officers were either trained or particularly well equipped. However, and in contrast, in some other areas officers welcomed this responsibility, arguing that it enabled the Benefit Service both to assist those in particularly difficult circumstances and to make a greater contribution to their authorities' broader social inclusion, homelessness and anti-poverty initiatives than had been possible previously.

However, the principle remains that it is the claimants themselves, in conjunction with other parties, such as their landlords or support groups, who are expected to make a case for the award of vulnerable status and thus for payment to the landlord. The role of the Benefit Service is to make the decision once the case has been made. In order to ensure that this process is fair and effective, and, from an administrative point of view, efficient, the experience of the Pathfinders provides a number of lessons which are presented in what follows.

Identifying and informing vulnerable claimants

Some Pathfinders were much more proactive than others in seeking to identify vulnerable claimants. One Pathfinder argued that one of the advantages of using a Big Bang approach to the introduction of the LHA was that it allowed them to identify many potentially vulnerable claimants in the period between their transfer onto the LHA and the introduction of direct payment. Given that the LHA on roll out will be introduced only for new claims, it is possible that the lower volume of LHA claims that will arise at any one time as a result may give authorities a greater opportunity to consider vulnerability in individual cases than would be the case under a wholesale transfer of claimants to the new regime.

It could also be argued that unless claimants and, perhaps, their landlords are aware of the vulnerability provisions, and how a request for vulnerable status can be made, then the safeguards that are introduced by these provisions will be ineffective. Both DWP and locally produced information indicates the existence of the provisions but there still remains the issue of how targeted authorities' information dissemination process should be in these cases – is general information sufficient or should a more directed approach be introduced alongside this?

The Pathfinder experience indicates that there was quite a wide degree of difference in authorities' practices in this respect. Box B provides some examples.

Box B: Identifying vulnerable claimants

Leeds: A review of caseload took place before the implementation of LHA to recognise individuals who may be interpreted as being vulnerable, and these were contacted prior to the introduction of the new allowance.

Edinburgh: There was no attempt to 'search' the database to see if any individuals might be deemed vulnerable, but as part of the information sent out to claimants explaining the LHA, claimants were asked to contact the local authority if they required a vulnerability decision. The authority had around 300 requests – around 10 per cent of the caseload.

Brighton & Hove: Prior to the move to direct payment, this authority was active in contacting local agencies who were likely to have vulnerable clients and local landlord organisations to explain the provisions and to encourage applications in appropriate cases. Members of potentially needy groups on the caseload – e.g., the over 60 years and DLA and DHP recipients – were called and/or visited so that the provisions and the application process could be explained.

NE Lincolnshire: The Council had published its vulnerability criteria and associated indicators. In the early implementation phase it was reported that 'considerable numbers' of claimants wanting to be deemed vulnerable approached staff in customer services and that a substantial proportion of claims were initiated by landlords (estimated at 70 per cent) often accompanied by poor evidence. Confusion on the part of landlords about the process for triggering vulnerability claims because of arrears led to tensions with the local authority in the earlier part of the Pathfinder period.

The different practices that the authorities adopted (and often modified) over the Pathfinder period are a reflection, in part, of the different policies and priorities of those authorities. There is little doubt that some underestimated the number of claimants who, often at their landlords' behest (or usually with their landlords' support), would apply for vulnerable status, while it may be that in others concerns over the number who might so apply could have led to a more muted or lower profile process of information dissemination.

Thus, it might be expected that where benefits and welfare rights more generally are seen as an integral part of a social inclusion or anti-poverty strategy the authority is likely to be keener to publicise details of the vulnerability provisions both more widely and more intensively than in authorities where these issues are less prominent politically. Further, where landlords and landlord organisations are comparatively powerful and vocal in their opposition to the LHA – or, at least, to the scheme's direct payment element – there is likely to be greater pressure on HB administrators to publicise the provisions more widely and for 'take up' to be more actively encouraged.

Evidence for vulnerability and arrears decisions

The central principle adopted for all vulnerability and arrears cases, in line with DWP guidance, is that an evidenced case must be made. In the case of arrears, all the Pathfinder authorities required evidence of missed payments in the form of the rent book or rent account, a situation which landlords in some areas were slow to accept, leading to difficulties for all of the parties concerned. In cases of vulnerability, or where there is active concern that the claimant is unlikely to pay their rent even though not in arrears at the time of coming onto the LHA, the evidence often needs to be provided by the claimant in conjunction with others, such as their doctor or a support group, or may sometimes be provided direct to HB administrators by others on the claimant's behalf.

The precise form in which the evidence is gathered in cases of potential vulnerability also differs between authorities. Some Pathfinders relied primarily on written requests from tenants and/or those assisting them and made decisions primarily on that written evidence while others relied more, or additionally, on face-to-face contact with the claimant. Box C gives some examples from the Pathfinders of how evidence for vulnerability is collected in the Pathfinders.

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Box C: Collection of evidence in cases of vulnerability: some examples

NE Lincolnshire: Information is provided, based on DWP guidance, as to what is likely to constitute vulnerability and detailing what will count as evidence for this. Requests for vulnerable status are expected to reflect the requirements explained in this information

Coventry: As in the case of NE Lincolnshire, requests are expected to conform to the requirements detailed in published information on vulnerability but it is also usual for an officer to interview a claimant who has requested vulnerability status

Conwy: Visits are made where the claimant has not responded to a request for evidence.

Blackpool: Visits will be made as part of the Interventions process when the claimant has no third-party support for their vulnerability request or are unaware of the vulnerability provisions.

In addition, to facilitate the collection of evidence, all of the Pathfinders set up links with agencies, groups and service providers both within and outside the local authority which could both advise and assist claimants, and provide evidence to the Benefit Service in cases where vulnerability appears to be an issue. However, the extent of these links, and the use made of them, varied significantly among these authorities. In some authorities, such as Coventry, few such active links existed prior to the LHA Pathfinder and had to be created for the first time. Elsewhere – in Brighton & Hove, for example – quite extensive pre-existing links could be activated. Chief among the organisations with which the Pathfinders had contacts, over the LHA vulnerability provisions and requirements, were those offering financial and homelessness advice, and those offering support to claimants with drug, alcohol or mental health needs.

The funding of MAS workers under the LHA reflects the likelihood that at least some claimants will require financial advice and assistance under the LHA and that the MAS would thus be in a good position to advise the local authority on the appropriate form of benefit payment in individual cases of difficulty. Certainly, across the Pathfinders, the MAS proved to be one of the main sources of evidence in cases of claimant vulnerability resulting from, or manifesting itself in, problems in managing the LHA payments. Thus, the role of the MAS is worth considering further here.

In five Pathfinder authorities – Conwy, Blackpool, Leeds, Lewisham and Brighton & Hove - arrangements were made with the local CAB to provide the MAS, while in the remaining authorities the service was provided through an additional post or posts located within the authority. The difference between the in-house and CAB provided MAS lies mainly in the degree to which they can be proactive in advising and assisting claimants, and thus in providing evidence for vulnerability decisions. All of those authorities that use the CAB located service strongly recommend claimants to access this in their literature, often on the HB Notification Letter, and some MAS officers also have office space or interviewing facilities provided by

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the local authority. CAB officers locally can also offer access to further expert advice where it transpires that their client has multiple or complex debts rather than solely an LHA related problem. However, it is always the choice of the claimant whether to follow up these strong recommendations. If they choose not to do so, the CAB cannot chase up their (potential) client. As a result some claimants may not take up or delay taking up advice with serious results.

Where the MAS is provided in-house, the cases of clients experiencing financial problems, which may in turn indicate other reasons for granting vulnerable status, can be passed direct to the officer who may then make appropriate recommendations to HB colleagues. Such an arrangement could be argued to be an advantage in terms of identifying and dealing with 'problem cases' earlier without having to rely on the claimant self-referring to an external agency.

Against this, it can be argued that in many authorities the CAB contains expertise and access to additional expertise that cannot be replicated, or it would be wasteful to replicate, in-house. Further, it is not at all clear that claimants seeking advice would willingly refer themselves, or want to be referred, for advice to the same organisation that is determining their original claim. Perhaps most importantly, the experience of those Pathfinders that have located the MAS in their local CAB is that, after a difficult start in some cases, they have received a very good service which they do not wish to see replaced by in-house arrangements. Since it is also the case that those authorities who have located their MAS in-house appear, where it is fully functioning, to be highly satisfied with its operation, the Pathfinder experience to date offers no convincing case for the superiority of one arrangement over the other.

Arrears – When to act

While requests for vulnerability are clearly to be investigated and determined rapidly, actions in respect of allegations that rent payments have been missed and arrears accrued are subject to rather greater discretion. As under previous HB regulations, payment is required to be switched to landlords once eight weeks or more arrears have been accrued. In practice, the Benefit Service in many Pathfinders were prepared to intervene by investigating and where necessary switching payments to landlords before the arrears reached the eight weeks level. Such early intervention can be justified on the grounds that missing rent payments can indicate that the claimant is unlikely to pay their rent, or is having difficulty doing so, and can prevent serious arrears arising. It was quite explicit in some Pathfinders that such action was also taken to protect landlords, many of whom opposed direct payment in the early stages of implementation on the grounds that it would lead to non-payment.

Box D shows some of the differences in the timing of arrears intervention by authorities during the Pathfinder period.

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Box D: Intervention in arrears cases: examples from the Pathfinders

Blackpool: the Benefit Service will begin to act once two missed rent payments, or sometimes only one, are reported.

Brighton & Hove: in the early days of implementation landlords were encouraged to notify the Service of missed payments as early as possible, but in many cases the notification was unlikely to be dealt with in practice until the eight week statutory period had elapsed because of processing time scales.

Conwy: the Benefit Service is willing to act after two such payments are missed.

Coventry: the Service will not switch payments to landlords in arrears cases until there is evidence that eight weeks arrears have been accrued.

Edinburgh: the Service will act after one month's rent has not been paid.

Leeds: the 'unlikely to pay' category is used to switch payments for claimants who have a history of chronic arrears. In these cases, the Service is more likely to define a tenant as being in arrears sooner and intervene quicker.

In light of the Pathfinders' experience, three points need to be made here which authorities preparing for roll out will wish to bear in mind:

- Whether or not authorities are committed to intervening in appropriate cases before eight weeks arrears have been accrued, it is still necessary to have evidence that arrears actually have arisen. Tenants can often legitimately withhold rent payment where there is a dispute under their tenancy and the Service needs to ensure that this is not the case when a landlord is alleging arrears.
- Early intervention, recall, is not mandatory under the regulations, and it is possible that doing so may encourage some landlords to allege arrears in the hope of 'fast-tracking' a switch of payment. In the early stages of implementation the Pathfinders reported that some landlords were aggregating current and previously unpaid shortfalls to increase the alleged arrears total or were beginning to demand the payment of such shortfalls for the first time in order to make a case for arrears.
- If the authority's procedures make it seem easier for a case to be made for arrears than for vulnerability, then this will act as an incentive to some landlords to go down this route in an attempt to secure an end to direct payment. Perhaps as a result, participants in one Pathfinder argued that dealing with arrears allegations, but not allegations of eight weeks plus arrears, would prove to be the main continuing issue under the LHA.

Making vulnerability and arrears decisions

Vulnerability decisions require a human decision maker and the clear exercise of discretion, unlike many of the more mechanised aspects of HB processing. Some officers involved in this area argue that determining vulnerability is more problematic than decision making in respect of alleged arrears – ‘It’s more difficult than just looking at a rent account or rent book’, as one officer put it. In practice, as the Pathfinders progressed, many HB officers were prepared to accept recommendations as to vulnerability from third parties such as the CAB/MAS, a doctor or homelessness services with only a minimum amount of evidence. Indeed, one Pathfinder encountered some legal difficulties when a vulnerability request from social services was not acted upon because the Benefits Service deemed that insufficient evidence had been provided.

Since evidence can take time to gather and assess, an issue that arose in some Pathfinders was the action that should be taken while the vulnerability and arrears cases are being investigated. In the early stages of LHA implementation in the Pathfinders, it appeared to be not uncommon for payment to the claimant to be suspended immediately on receipt of a vulnerability request or arrears allegation while investigations were undertaken on the grounds that this prevented claimants receiving their entitlements but not paying, or having difficulties paying, their rent. However, it clearly also meant that landlords were even more unlikely to receive any of their rent during that period.

As a result of DWP advice, the practice of suspending payment in these particular circumstances seems to have been abandoned. Subsequent practices appear to vary. Some authorities appear to continue to pay the claimant until the case is determined, which clearly fulfils the spirit of the LHA but can compound tenants’ and landlords’ difficulties in the interim. Others – Blackpool, for example – now make any payment falling due during investigations by cheque to the landlord at the tenant’s address.

DWP guidance also makes it clear that decisions regarding vulnerability and arrears that lead to a switch of payment to the landlord should be reviewed. Here it is worth distinguishing between reviewing payments to landlords on the grounds of vulnerability and those made on the grounds of arrears.

Reviewing vulnerability decisions

In respect of vulnerability, the Pathfinders tended to set review dates for their decisions which varied according to the case. Such dates are another matter over which officers have discretion. It is worth pointing out that many authorities found that, in the words of one HB officer, reviews ‘take longer than the original decision’. This is partly because claimants having been accepted as vulnerable and who do not want direct payment resumed have less incentive to provide the evidence once more.

Where a review is being carried out and the evidence is not (re) provided, the payment may be switched back to the tenant but officers are, for obvious reasons, often reluctant to do so. However, simply continuing the payment arrangements may be the best decision in such cases. Uniquely among the Pathfinders, Conwy, under the Pathfinder agreement between the local CAB and the County Council, gave the responsibility for reviewing all cases to CAB officers who made recommendations as to whether payment to the landlord should be maintained.

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It is also worth noting that tenants and their landlords often actively resent having to 're-prove' their case. One result was that by the end of the Pathfinder period some Pathfinders were reporting backlogs of cases that were awaiting review or on which a decision was pending. A common response to this on the part of authorities was to extend the period between decision and subsequent review – 12 months is now the norm in one Pathfinder, for example, while in another a six month period was set in the case of claimants unable to open a bank account. Many Pathfinders had also decided that certain cases such as those involving dementia or other degenerative illness would, in practice, not be reviewed.

One important finding that does emerge from the varying practices of the Pathfinders is that vulnerability decisions and reviews are time consuming and absorb additional resources. This is despite the fact that the great majority of claimants receive direct payment, suggesting that, in all Pathfinders, it is only a minority of the caseload that is involved. However, some participants argued that the amount of work involved in deciding on vulnerability requests is disproportionate to the number of cases with which they have to deal.

Reviewing arrears decisions

The Benefit Service is also ultimately responsible for determining the period for which the LHA should be paid to the landlord where arrears have accrued. In principle, where the claimant is in arrears and is in receipt of an LHA surplus, officers can estimate how long it will take to pay off the arrears using the surplus as part of the payment that is being switched to the landlord. This then defines the period over which payments should be made to landlords and then reviewed⁴. In practice, procedures differed between Pathfinders in this respect, with some automatically paying the surplus to the landlord in these circumstances but at least one Pathfinder requesting the claimant's permission to do so.

However, in some cases it may be difficult for the Benefit Service to estimate when the outstanding arrears have been paid off. The obvious cases are:

- Where the entitlement is equal to the eligible rent so that the tenant must make additional payments to reduce the level of arrears that were deemed significant enough to bring about the initial switch of payment
- Where the LHA entitlement is less than the eligible rent so that the tenant must make additional payments to the landlord to prevent the arrears from increasing and further payments to reduce those arrears

In these instances, where it is often not possible for the Service to tell when the arrears have been paid off or significantly reduced, officers have to rely on landlords and claimants accurately reporting the arrears position when the review falls due. Where both claimant and landlord prefer the payment to be made to the latter, this clearly offers an opportunity for them to collude and to misrepresent the position. Even where this is not the case, and evidence from the landlord and tenant confirms that the arrears are being reduced, a decision has to be made as to whether:

⁴ Amendment of regulations 95 and 96 of the Housing Benefit Regulations 2006 states that excess payments can be made to the landlord where there are rent arrears without seeking permission from the claimant.

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- all arrears have to be paid off fully before a switch back to direct payment is considered, or
- a 'significant amount' (to be determined by the Service) has been paid off before a switch back to direct payment is considered, or
- in those authorities which take action only where arrears have exceeded eight or more weeks, a reduced arrears level of below eight weeks should signal a case for considering a return to direct payment.

All three of these decisions are legitimate under the regulations.

In practice, it appears that most Pathfinder authorities required all arrears – not just an amount sufficient to reduce the initial arrears – to be paid off before considering a switch back to direct payment. Even then, it had to be considered whether once having accrued arrears and paid them off the claimant was likely to fall into arrears once more. Where the arrears arose because of a short-term, adverse change in the tenant's circumstances which no longer obtained, there was often a case for a return to direct payment. However, where there was a previous history of arrears or an ongoing risk of these arising again, payment usually continued to be made to the landlord. It is also worth noting that it can also be almost guaranteed that returning to direct payment in almost any circumstances will be opposed by the landlord.

Dealing with appeals against vulnerability and arrears decisions

Since direct payment lies at the heart of the new HB regime and is almost inevitably unpopular with many landlords it might be expected that vulnerability and arrears decisions that maintain or restore the payment of the LHA to tenants would lead to a sharp increase in the number of appeals with which the Benefit Service has to deal. It is therefore interesting to note that one of the findings of the Pathfinder evaluation is that appeals against vulnerability and arrears decisions were, in practice, quite rare.

It is, of course, important to distinguish formal appeals that are ultimately decided upon by the Appeals Service (TAS) from queries, complaints, requests for the review of a decision and general grumbles on the part of claimants and landlords. Most HB officers attempt to deal with such matters before TAS procedures are invoked through a review of the case or to provide more information, often informally, to the complainant as to why a particular decision has been made. Thus, many potential appeals under both the new and previous HB regimes are often dealt with at an early stage through discussion between the parties and by clarification of the issues involved.

Some Pathfinders had certainly anticipated an increase in appeals work more generally and one had expanded its Appeals Team in anticipation. In this context, many Pathfinders did experience a marked increase in the demands for advice and assistance from landlords and tenants particularly in the early stages of implementation. Many also experienced an increase in complaints and grumbles about, for example, processing delays and standards of service, and errors in assessment. At the same time, however, complaints about Rent Officer (RO) determinations, restrictions and delays were reduced, although a handful of requests for RO re-determinations were received by the Service in one or two authorities in respect of the classification of studios and bedsits under the LHA. Further, in Leeds, for example, the number of appeals launched against overpayment decisions fell during the Pathfinder period, which was ascribed to fewer payments, and therefore fewer overpayments, being made to landlords under the LHA.

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Even though the experience of the Pathfinders suggests that the number of formal appeals and serious, long-running disputes with which the Service has to deal have not risen under the LHA, it is still important that authorities have appropriate procedures in place for handling such matters as they arise. In the early stages of implementation the major role in dealing with LHA specific complaints, requests and potential appeals was often taken by the Pathfinder Teams responsible for implementing the regime. However, the common experience was that the responsibilities in this area could quite rapidly be devolved to those who had normally dealt with such matters under the previous HB arrangements – Appeals Teams, Benefit Team Leaders or Benefit Processors themselves.

Consequently, the message from the Pathfinder experience is that it is important for authorities to be aware of the potential for an increase in queries and complaints of various degrees of seriousness and to clarify responsibilities for dealing with these, but that the significant reorganisation of existing structures for dealing with them are rarely required solely as a result of introducing the LHA.

Arrears, vulnerability and the spirit of the LHA

The resource and other costs of dealing with, deciding upon and reviewing vulnerability and arrears cases, often under quite strong pressure from landlords and tenants, can be significant. Hence, there may be quite strong incentives to some Benefit Services to authorise payments to landlords almost as a matter of course on receipt of a request, or to continue with them on review, rather than actively considering the case for (a return to) direct payment.

However, it is important to stress that to switch payments to landlords as a matter of course in order to avoid these costs is clearly against the spirit and intention of the LHA. Further, the evaluation of the LHA came to the conclusion that there were some administrative advantages, not simply additional costs, to the LHA. These included somewhat easier and possibly faster claim processing which stemmed mainly from the absence of having to refer claims to the RO and then incorporate the rent determinations once received. Another, very clear advantage of the LHA to those involved in HB administration and delivery is the clarity and transparency of the regime. Apart from during the very earliest stages of implementation, this reduced the need for many claimants and landlords to seek basic advice, removed the uncertainty over what the claimant's maximum entitlement would be, and increased the information available to both parties in making decisions about their accommodation. In this way the LHA also makes the work of those advising and interacting with claimants easier.

Thus, both from a national perspective and from that of an individual Benefit Service, the additional costs of dealing with vulnerability and arrears decisions and reviews need to be set against the benefits that the LHA can bring. It is true that there do not appear to be any consistent savings in staff resources in the Service across the Pathfinders as a result of the LHA – resources tended to be reallocated within the Service rather than reduced or increased. However, it is instructive to note that officers in the Benefit Services involved in the evaluation greatly preferred the processing implications of the LHA to those of the previous HB regulations. No officers indicated that they wanted to return to the old system.



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