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Welcome—April 2009

Following one of the UK's longest periods of sustained economic growth, encouraging too much borrowing, it seems ironic that our government is hell bent on record borrowing (£175 billion this year) to try and get us out of this mess.

Faced with a shrinking economy, severely reduced earnings from the City and falling tax revenues the Chancellor this week set out a course which would appear to penalise the very people likely to create wealth—the only true way to get us out of debt.

The general consensus seems to be that his future growth forecasts, upon which he has based his budget, are overly optimistic, and despite the revenge taxation of the rich being popular with some, it seems likely the burden of extra taxation will fall heavily on us all—after the election!

The big danger is that a government, with such astronomi-

cal debt, will be faced with the prospect of massive cuts in public spending (too politically sensitive?) or to print more and more money, inflating its way out of debt.

This would undoubtedly result in inflation in double figures again and dramatic devaluation of sterling, with particular long-term implications for investors.

In the meantime, rent arrears and tenant default are issues that landlords and agents are having to deal with right now.

Although many landlords wish to avoid that part of the lettings market which deals with Housing Benefit tenants, sometimes they don't have a choice—a tenant that's been made redundant or losses a large part of their income may have no option but to consider a claim for HB.

This month's LandlordZONE



Newsletter tackles the thorny and complex issue of claims for HB.

Despite the problems, HB can be a life saver for both landlord and tenant. There will inevitably be delays when you embark on the process but patience and a little expertise will often pay off, and a successful claim can prove a very satisfactory outcome.

When claims are rejected, and Councils now facing a 25% increase in such claims may be tempted to do this, it's not the end of the road—very often there's a good change of overturning this on appeal if you know how to go about it.

Here, **Michael Clayton** explains how his expertise in these matters can help landlords through the system.

Tom Entwistle

Newsletter Topic—Claiming Local Housing Allowance

Housing Benefit claims now come under the new regime of the **Local Housing Allowance (LHA)**

This is a new way of calculating Housing Benefit for tenants renting accommodation from private landlords. It was introduced nationally on 7 April 2008.

The main change for landlords is that the payment of LHA will be **made directly to the tenants** who will be responsible for paying the rent themselves.

What most landlords object to is the seemingly inequitable and downright unfair way the government has imposed this on **privates landlords**, whilst exempting local authority and Housing Association social landlords—the latter on the government accepted principle that it could

seriously affect their cash-flow. At a time when landlords are likely to find themselves with tenants who need to rely on HB payments, often through no fault of their own—they may have been made redundant—these rule changes present something of a challenge to any landlord looking to remain solvent themselves.

However, rules are rules and private landlords will have to come to terms with them.

In fact there's probably more you can do than you thought to increase your chances of success with HB claims and rent payments, though a certain amount of expertise is needed. Local authorities will consider paying the landlord directly where there is evidence to sug-

gest that the tenant is unlikely to pay their rent and *"making direct payments would be in the interests of the tenant."* Where arrears of benefit have reached 8 weeks, the local authority will arrange to make payments direct to the landlord *"unless it is not in the tenant's overriding interests to do so."* However, landlords should not wait for the 8 week period to be reached before contacting the local authority.

Michael Clayton (Associates), a specialist Housing Benefit & LHA advisor, has produced the content for this newsletter.

Michael can be reached on michaelclaytonassociates@live.com
Telephone: 01274 629315

Good Tenant, Bad Tenant?

The potential cost and the essential cure.

A good tenant who pays their rent on time, every time, and takes care of the property, is generally deemed a good tenant.

However in today's economic climate, with redundancies all around, it seems fair to say that sooner or later as landlords we will come across a good tenant who has lost their job, and as such now needs to claim Housing Benefit.

If for whatever reason they are refused Housing Benefit, then the only option for them is to move out of the property and seek to be re-housed by the council – this is where the problems can start.

Now, the good tenant becomes a bad tenant, costing you time, money and misery.

The council will only give priority to (in this case) a homeless person. And vacating a property is deemed voluntary homelessness, so is not applicable.

Therefore the tenant needs to be evicted by the landlord. This means a long drawn out, not to mention quite expensive eviction process.

The potential costs for evictions are listed below (based on £500 per month rent):

- Late payments – Average 3 months = £1500

- Complete eviction process with section 8 / 21 – via solicitor = £800

- Additional arrears before court appearance = average 2 months = £1000

- Court appearance – waste of the day and expenses = £300

- Bailiffs called for final eviction, if needed – £200

- New locks - costing £200

- Refurbishment for new tenant - Ave £5000

- Void period for refurbishment and waiting for new tenants – Ave 2 months = £1000

- Letting agent tenant find = £500

Total = £10,500



Landlord & Buy-to-Let Show

The largest and longest established private rented sector show. The show comes to Manchester Central (formerly GMEX) on 5th-6th June 2009 with a brand new programme of free seminars.

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Good Tenant, Bad Tenant—...continued

All in all, an eviction could cost around five to ten thousand pounds or even more quite easily.

Even worse, the house could be repossessed!

In today's economic climate, can you really afford to go down this route?

There are however a couple of simple alternatives which may help you in this situation:

First, get a professional to look over the rejected housing benefit case, as often your local HB people will reject the case sometimes on a non-valid ruling.

As most people do not know what the correct ruling should be, they

tend to accept the judgement and make alternative arrangements (in which case it inevitably costs the landlord money in eviction costs). Ideally have the case assessed by a professional before the tenant applies for HB, and also, if possible, have the application prepared for you and the tenant by the professional—both of these could save you time, money and a very big headache!

The second option to consider is to compromise with your tenant. If after the rejected claim has been confirmed as correct by your professional, then look at your mortgage costs per month and reduce the rent accordingly to just about cover the monthly payments or what you can afford to lose, until

such time as the tenant is back in employment.

Then, increasing the rent and charging a little extra each month to pay back the recent shortfall could put you back to square one.

The key to survival in these difficult times is looking at all the options and perhaps being a little inventive.

This means you get to keep a good tenant (the devil you know!), no unnecessary stress and minimum damage to your cash flow.

Of course you need the co-operation of your tenant—not all do cooperate when they are in arrears.



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Rights & Obligations of Landlords

The **landlord's rights and obligations** in relation to Housing Benefit claims:

It is vital that a healthy relationship is maintained between landlord and tenant throughout.

In addition, where an expert is to be brought in to help with the application process, the tenant would be required to sign a consent form.

Contrary to widespread belief landlords do have a role to play in terms of Housing Benefit.

You might be surprised to find out just how much influence you can exert.

Your rights:

- The right to demand or request direct payment in certain situations
- The right to question decisions on overpayments recovered from you using the appeals process
- The right to challenge a decision to pay the tenant when a request has been made for you to be paid, using the appeal process
- The right not to pay alleged overpayments unless certain conditions are met
- The right to complain to the

Ombudsman about poor administration

Your obligations:

You must report anything that you are aware of about your tenant that might affect benefit entitlement (a change of circumstances).

Best examples: people moving in or out, a change in the amount of rent payable, employment etc.

Keep an eye out to make sure that the tenant has not left the property.

Do not rely on anyone informing the HB office on your behalf—make sure you communicate in writing and always keep a copy of your correspondence.

Provision of information: HB offices can ask landlords to provide information about themselves and any Housing in the UK that they have an interest in.

This only applies where direct payment is being made (or sought) by the landlord AND the HB office serves a notice on the landlord or agent that it suspects or is investigating an alleged impropriety in connection with a claim for HB.

The Housing Benefit claim

The council (HB) will most likely ask you as landlord to sign a declaration (relating to the obligations of the landlord) for any landlord who accepts direct payments.

Such a declaration is acceptable to sign as it has no real effect on your rights to challenge an overpayment at appeal.

A few points for you as a landlord to consider:

Once you accept payment of housing benefit, by the housing benefit office direct to you, you incur a number of obligations and some rights, even though the housing benefit office is only acting as the tenant's agent.

As a landlord, do not help claimants fill in forms. There are a number of possible problems. Essentially, you as a landlord or your company could end up out of pocket if a false statement or misrepresentation is made.

Relying on the tenant to complete the forms is one option, perhaps with your assistance?

However, with the co-operation of your tenant, a far better option is to seek expert assistance to complete these forms on the tenant's behalf. This will definitely give you and your tenant a far better chance of success.



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Local Housing Allowance (LHA)

Is the LHA a diabolical system?

There have been a lot of contributions recently on the **LandlordZONE forum—Housing Benefit Questions (HB, LHA & DSS)** about this topic. As a Topic Expert (Michael Clayton Associates) and HB specialist advisor I have given my contributions as well.

The main contention is undoubtedly the principal of paying the tenants and not landlords. Such is the resentment among landlords, there is to be the formation of a petition to change the law.

The crux of the matter is that landlords see a loss of control through not receiving direct payments of HB. In the worst case scenario, irresponsible tenants are enfranchised.

What compounds the stress is that, in all probability, landlords are trying to keep up mortgage repayments as the economy slides deeper into recession. The rental income could be all that is keeping the wolf from the door?

Stating the obvious, LHA is only a problem if you are not receiving payments of rent. The loss of control may, in the worst case, lead one to believe that the only course of action is an eviction notice.

To place the issue in context, the natural starting point is found in the opening article. In particular,

the enormity in terms of the costs associated with an eviction. I am left in no doubt that the best course of action is to work with the tenant in order to find a solution.

In so doing, I acknowledge that there are circumstances in which the landlord-tenant relationship has broken down. The landlord or investor simply wants that person out. This is a prerogative and I am not here to advocate against such a measure in the appropriate circumstances.

As a benefits specialist, my approach is to ensure income maximisation, including ways in which a Housing Benefit problem can be recovered. I am advocating financial inclusion. I want to ensure, wherever possible, a win-win scenario for the mutual benefit of all parties concerned.

You are faced with the stark reality of LHA. Unless or until the law is changed, you face a choice: -

1. Moan and groan about the LHA. Adopt a Draconian approach against the system. Act like a territorial caveman. Cost yourself thousands in eviction costs.
2. Find a compromise with your tenant. Allow their entitlement to contribute towards the af-

fordability of your accommodation. Read the articles contained within this publication. At the same time, understand your rights and obligations as a landlord. Realise how your attitude can shape future relations with your tenant.

Due to the current credit crunch and the economic nightmare that has come with it, evermore workers are losing their jobs - those failing to regain employment quickly may be seriously considering a housing benefit claim just to keep afloat.

This will of course affect you as landlord, your obligations, your liabilities and also the hidden costs of how a once excellent tenant could quite quickly become a cash flow nightmare for you, simply because of the way the system works.

Working with LandlordZONE, I as Michael Clayton Associates have put together a series of questions and answers for the subscribers of LandlordZONE, to help those landlords affected to be in the strongest position possible regarding HB and LHA matters.

With free initial consultations, full case application assistance, as well as reversing rejected claims, appeals and direct payments claims Michael Clayton Associates is available to help landlords.



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Common Housing Benefit Questions

If the tenant is 8 weeks in arrears, the landlord must tell the HB office. Otherwise, payments will continue to the tenant.

DISCRETIONARY RULE: LHA ONLY

The council has the discretion to pay the landlord when:

- it is perceived that the tenant has difficulty in managing their own affairs;

- it is improbable that a tenant will pay the landlord (previous conduct?);

the council is pondering who to pay - in which case payments will be paid to the landlord for 8 weeks (not to be confused with the 8-week arrears rule);

- the claimant leaves;

- the local authority was paying a landlord at the tenant's previous address.

DISCRETIONARY RULE: non-LHA

The council has the discretion to pay the landlord when:

- claimant asks for / agrees for direct payments to landlord;

- it is in the best interests of the claimant to do so;

- claimant leaves owing arrears

Common Misconceptions:

- It is not possible to claim HB if the tenant previously owned the same house within the last five years! NOT TRUE

- Tenants cannot claim HB on the property they owned unless you can prove that you were being repossessed. NOT TRUE

Local authorities have a propensity to interpret the regulations in a way that suits them! This is an example:

Regulation 9 (HB Regulations 2009). Circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling

“(1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where—

(h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises and less than five years have elapsed since he or, as the case may be, his partner, ceased to own the property, *save that this sub-paragraph shall not apply where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership...*”

The rules can be complex.



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Sale and Lease-Back (Sell and Rent-Back—SRB)

SRB schemes have become popular and involve individuals (usually those facing financial difficulties) selling their home at a discount in return for the right to remain in the property as a tenant.

Typically, the rental agreement is an assured shorthold tenancy of up to 12 months, so the individual (tenant) has very limited security of tenure.

This has caused considerable controversy as landlords have been evicting rather than helping tenants in their predicament. This behaviour is now likely to be curtailed.

On 15 October 2008, the OFT published its market study on SRB which found that:

- some consumers are entering into an SRB transactions when it is not necessarily the best option for them
- the lack of long-term security of tenure means that there is substantial risk for the tenant
- SRB deals are complex to evaluate, particularly for consumers already in stressful, difficult financial and emotional

situations.

The OFT recommended, among other things, those SRB transactions be subject to statutory regulation, and that this be carried out by the FSA.

Alongside this, the Treasury has published its consultation document and proposed amendments to the secondary legislation under the Financial Services and Market Act 2000 to bring SRB within the regulatory scope of the FSA.

“On the assumption that we are asked to regulate the SRB market, this paper invites views on how we might do this for an interim period, while a full regulatory regime is being developed and implemented.”

Some investor landlords have been advertising ‘sell and rent back’ schemes nationally.

Unfortunately some have been operating in a way that has not been in the interests of the original owner occupiers—in many cases the promise of a long-term tenancy has meant them being thrown out on their ears.

Some of these “investors” take advantage of a distressed situation, which has to some extent brought the whole process into disrepute—hence the proposed FSA regulation.

In fact, if done properly, SRB can work well for both parties.

The distressed occupier maintains his lifestyle in his own home, perhaps keeping his family together and the kids in their existing school.

He may even be allowed to buy his property back over a period of time.

The investor landlord gains by buying at a bargain price and having a stable long-term tenancy.

In order to make it viable, the tenant need to make attempts to maximise their income. Assistance from the Housing Benefit is the most significant way of achieving this.

Landlords looking to invest in SRB market should pay attention to the potential of HB to keep those owner occupier / tenants in place.



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Review: Property Inventory Self-Help Kit from—[Law Pack](#) Publishing

The LawPack **Self-Help Property Inventory** is a timely offering from this quality publisher of legal kits and books on landlord-tenant matters.

The recently introduced (April 2007) **Tenancy Deposit Scheme** means it is now mandatory—if you ever expect to win any damage compensation—for landlords to make sure a good inventory has been taken.

Gone forever are the days when you could stuff the bundle of fivers in you pocket—the deposit—and hand over the

keys. Successful letting now involves a systematic process including credit checks, referencing and very importantly, taking and agreeing with your tenant a comprehensive inventory.

These days, with digital cameras, it's a very good idea to include photos in the inventory itself—you can even take a photo of the meters showing their readings. The tenant signs the inventory to show agreement and off you go.

In addition to the blank inventory forms, with this kit Law-

Pack provide a comprehensive guide which runs to 39 pages, explaining exactly how to go about doing a comprehensive inventory and schedule of condition.

It also explains about the issues, the Check-in and Check-out process and how to assess for wear and tear, life expectancy and the apportioning of compensation costs between landlord and tenant. At just £9.99 you can't go wrong with this kit.

Tom Entwistle



Forthcoming Reviews

May 2009—**Student Housing and the Law**—Martin Davis and Graham Robson—[Shelter](#)

Online Information & Guidance on Claiming LHA

[The LHA-Direct Website](#) enables tenants (and landlords) renting accommodation from a private landlord to calculate the possible amount of HB they will get.

It's been developed by The Rent Service in conjunction with the Rent Officers Wales and the Rent Registration Service in Scotland.

The functions of The Rent Service were transferred to the Valuation Office Agency on 1 April 2009.

This web site provides:

- A Bedroom calculator = Works out how many bed-

rooms tenants may be eligible for.

- Local Authority Search = Finds LHA rates by Local Authority
- Postcode Search = Finds LHA rates by location.

The Department for Work and Pensions (DWP) has produced a range of support material that will help tenants & landlords understand how the LHA is worked out:

- 1—[under 25 and single](#)
- 2—[25 or over & single](#)
- 3—[a couple](#)

4—[a care leaver under 22](#)

5—[severely disabled](#)

6—[none of the above](#)

LHA rates are a personal allowance based on (1) Broad Rental Market Areas (BRMAs) - [Guidance - Broad Market Rental Areas](#), and (2) Size criteria.

Different LHA rates will apply in different areas. Within those areas, they will be based on the median rent charged by landlords in the private sector for properties of various sizes.



[The LHA Direct Web Site](#)
[DWP Guide for Landlords on LHA](#)
[Direct Gov Guide to LHA](#)
[The LandlordZONE HB Forum](#)

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Forthcoming Topics—LandlordZONE Newsletter...

Here are some of the topics—in no particular order, that we have planned to include in the Newsletter over the coming months:

- **Owning and Running a HMO**
- **Collecting Debt and Rent Arrears**
- **Investing in Property in**

Good Times and Bad

- **Commercial Rent Arrears**
- **Electrical Safety**
- **Obtaining a United States entry visa through property investment**
- **Investing Abroad**
- **Landlord's Taxation**
- **Using Building Contract-**

tors

- **Finance and Mortgages for Buy-to-Let**



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News for Landlords:

For **Commercial Landlords** with tenancies created under the **Landlord and Tenant Act 1954**, the introduction of the **Tribunals, Courts and Enforcement Act 2007** (“the Act”) was set to abolish the ancient landlord remedy of distress, which at this time of economic difficulties could have a big effect on the way in which they recover any rent arrears. The new procedure, to be introduced in order to comply with the European Convention on Human Rights, can be found under ss 71 to 87 of the Act and is known as **Commercial Rent Arrears Recovery (CRAR)**. However, many fear CRAR would be much less effective in collecting rent arrears and service charges, and to the relief of commercial landlords, the necessary regulations to bring it into force have still not been brought in. According to Emma Humphreys in Estates Gazette (18 April 09) CRAR may never see the light of day, or at the very least not until 2012, by which time a change of government may preclude it anyway.

Blow to holiday-home Lettings. One big advantage of holiday lettings until now has been their business status for taxation. Alas, these owners will lose a range of tax benefits from next April after a hidden clause in the Budget revealed the holiday lettings rules are to be scrapped. Under current legislation, landlords who own a holiday property in the UK enjoy several benefits under the **Furnished Holiday Lettings (FHL)** rules, including being able to write off any trading losses (such as loss of rental income) from their second home and being allowed to postpone any capital gains tax by investing in another property. A furnished holiday letting business may also be exempt from inheritance tax where the lettings are short-term and the owner is significantly involved with the holidaymakers' activities. But, the 2009 Budget shows these benefits will be abolished from April 2010. The only positive is that, until that happens, the FHL rules will be extended to those with qualifying homes within the EU.

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