

## CAPITAL SUMS POLICY

### POLICY DESCRIPTION

1. The Capital Sums Policy ('the Policy') describes how Housing treats savings and windfall payments when determining eligibility for social housing and entitlement to a rent rebate.
2. 'Savings' is defined as money accrued over time. In assessing a tenant's savings, Housing will take account of money held in bank accounts in the name of the tenant and their partner (if they have one); plus money invested in funds, bonds, shares; and the value of any land that the tenant owns or part-owns; and any property that the tenant owns or part owns but does not live in.
3. 'Windfall payments' are one-off lump sum payments relating to inheritance, occupational pensions, compensation, redundancy, insurance, court-awarded settlements, bonds, proceeds of gambling; plus any other sum of money which is not classed as income under the Regulations; plus non-cash windfalls in the form of property, cars etc.
4. Tenants are expected to declare windfall payments as soon as they are received. Housing will determine the impact of such payments immediately. Tenants' savings are considered when a tenant applies or re-applies for a rent rebate. Applicants' savings are taken into account upon application for social housing.

### SUMMARY OF POLICY

5. Every household is allowed an amount of capital without it having any bearing on their eligibility for social housing or the size of any rent rebate to which they may be entitled. This amount of capital is known as a '**nest egg**'.
6. Throughout this policy any reference to a tenant's capital, savings or nest egg includes all dependant members of the household and/or a partner/spouse/joint tenant.
7. Each nest egg is intended to be sufficient to enable the tenant and their family to live outside of social housing for at least six months in the event that income from all other sources ceased. The size of the nest egg depends on the size of the tenant's household.
8. If a tenant's savings exceed the household nest egg, the tenant's rent rebate – if they are claiming one – is cancelled and they are charged the full standard weekly rent (SWR) for a defined period of time. The period of time is calculated by using an **Independent Living Formula** to work out how long the tenant's savings would last if they had to use them to make good the shortfall between their existing living expenses and the theoretical cost of living outside of social housing.

9. If the tenant's savings exceed both the nest egg and the **upper capital threshold** (set at 3 x the nest egg), the tenant's tenancy is at risk. Whether their tenancy is terminated depends on how long, in Housing's view, they could afford to live in the private rental sector before becoming re-eligible to apply for social housing. Again, the Independent Living Formula is used to work this out.
10. If they are within ten years of pensionable age (currently 65), their tenancy will only be terminated if they can afford to live in the private sector for at least 10 years. If they are further than 10 years from pensionable age (i.e. if they have not yet reached their 55<sup>th</sup> birthday) their tenancy will be terminated if they can afford to live in the private sector for five years. This is known as the **Ten Year Rule** and the **Five Year Rule** respectively.
11. The values of the nest eggs – and therefore the upper capital thresholds – are revised annually to reflect changes in the supplementary benefit requirement rates and the average cost of renting in the private sector.
12. The Policy allows Housing to work out the effect that windfall payments and savings have on a tenant's ability to claim a rent rebate and remain in social housing. If a tenant's rent rebate is cancelled, they will be told precisely when they will be eligible to reapply (provided that their savings, at that point, are below the nest egg), and they will be charged the standard weekly rent in the meantime.
13. The Policy means that Housing staff no longer pass judgement on whether tenants have spent windfall payments and savings appropriately or not. Tenants will be told how much rent they will have to pay and over what period of time. If they subsequently choose to give money away or spend it all, they will do so knowing that they still have to pay the standard weekly rent for the specified period of time, i.e. they cannot re-apply for a rebate early.

#### **BROADER STRATEGIC AND/OR LEGAL CONTEXT**

14. In devising the Policy, Housing has had regard to the goals and aims outlined in the States' 2013 Social Policy Plan (SPP), in particular the need to promote social equality.

#### **LINKS TO OTHER HOUSING POLICIES AND LEGISLATION**

15. In calculating depletion rates and assumed expenditure, the Policy takes into account the rules underpinning the Rent Rebate Scheme, and Housing's Social Rented Housing Income Thresholds Policy. The Income Thresholds used for the purposes of capital sums calculations are detailed in the Appendix. The Policy is also linked to the Review of Tenancy Policy and the Allocations Policy. The process to appeal decisions taken under the Policy is detailed in the Appeals Policy.
16. There are also links to the Social Security's Supplementary Benefit (SPB) Law (specifically: benefit rates, treatment of capital, divestment and notional income).

17. The Policy is intended to determine the impact of windfall payments and savings on a tenancy and/or rebate entitlement, and to give the tenant certainty as to how much rent they will be charged and for how long. This in turn enables them to budget and to better manage the risk of spending their savings before they become eligible to reapply for a rent rebate and/or social housing.

### **NEST EGGS**

18. Money management advisors, debt counsellors and the Citizens Advice Bureau agree that a household should have enough money put aside to support themselves for approximately six months, to be used in the event that their regular income streams are unexpectedly interrupted.
19. Tenants can build up a nest egg without it jeopardising their tenancy or reducing their rent rebate. Windfalls are ignored up to the point where they exceed the relevant nest egg threshold (see below).
20. Housing applies seven nest egg limits, each linked to household size.

#### *2017 nest eggs*

<b>Household size</b>	<b>Nest egg</b>
Single (one bed)	£10,660
Single (two bed)	£13,000
Couple(one bed)	£12,740
Couple (two bed)	£15,080
Family, one child	£16,900
Family, two children	£21,580
Family, three or more children	£23,400
<i>Severe disability benefit claimants</i>	<i>See Paragraph 22</i>

21. Each nest egg is calculated by multiplying the weekly Social Housing Eligibility Income Threshold by 26 (to cover a six month period) and is rounded up. The limits will therefore change in line with the eligibility thresholds, which in turn change to reflect increases in supplementary benefit rates and the cost of renting in the private sector.
22. Tenants and members of the household in receipt of Severe Disability Benefit have an amount equal to the benefit added to their weekly income threshold, and 26 x the Severe Disability Benefit allowance can be disregarded on top of their nest egg limits. This is to ensure that tenants who face additional costs as a result of their disability are not financially disadvantaged.
23. A tenant's nest egg could be comprised entirely of money received as a windfall, or it could be savings accrued over time, or it could be a combination of the two.

24. When one of the tenant's dependants leaves the household or reaches the age of 18 and is not in full-time education, the tenant's household size shrinks (because they have fewer dependants to accommodate and therefore a reduced need for bedrooms) and a new, lower nest egg applies. An exception to this rule is where the dependant was sharing a bedroom with another dependant.
25. When a new nest egg applies, the effect on the tenant of any savings needs to be recalculated.

### **UPPER CAPITAL THRESHOLDS AND THE FIVE/TEN YEAR RULE**

26. There are seven upper capital thresholds, each one a multiple (x 3) of the nest egg:

*Upper capital thresholds (2017 rates)*

Household size	Upper capital threshold
Single (one bed)	£31,980
Single (two bed)	£39,000
Couple(one bed)	£38,220
Couple (two bed)	£45,240
Family, one child	£50,700
Family, two children	£64,740
Family, three or more children	£70,200

27. If a tenant's savings (including any windfall) are above the nest egg but below the upper capital threshold, they will be charged standard weekly rent for a period of time (see below) but their tenancy will not be at risk.
28. If a tenant's savings (including any windfall) are above the upper capital threshold, their tenancy will be reviewed in accordance with the Five/Ten Year Rule.
29. If the older of the tenant or the joint tenant or partner (if applicable) is at least 10 years away from pensionable age and can reasonably be expected to support themselves outside of social housing for five years or more, Housing will move to terminate their tenancy so that their property can be re-allocated. If they are less than 10 years away from pensionable age they need to be able to support themselves outside of social housing for ten years or more before their tenancy is terminated.
30. Housing will use the Independent Living Formula (see below) to work out how long a tenant can support themselves outside of social housing.

### **EXCEPTIONS TO THE FIVE/TEN RULE**

31. Housing reserves the right to allow a tenant who has 'failed' the five/ten year test to remain in social housing if their property, once vacated, would be difficult to re-let. In

such circumstances, their tenancy would be extended on a rolling 12 monthly basis. Any decision to allow a tenant to remain, and to give extensions to any period of grace, must be made by the Director or Deputy Director of Housing.

32. In truly exceptional circumstances, Housing can exercise discretion and allow a tenant to remain in social rented housing even if they could support themselves in the private rental sector for more than five/ten years (as applicable), and even if their property, once empty, could be re-let without difficulty. Every decision to make an exception must be documented in writing; signed off either by the Director of Housing, or their deputy; and then:

- attached to the tenant's file notes;
- communicated to the tenant in writing; and
- (once suitably anonymised) attached to this policy as an example, so as to create a body of casework that will inform future decision making

33. Where a tenant's health is an issue, Housing will work with healthcare professionals in order to achieve the most fair and reasonable outcome for all parties.

#### **EFFECT OF WINDFALL PAYMENTS**

34. Tenants are expected to declare windfall payments as soon as they are received.

35. As soon as practicable after the tenant declares a windfall payment, or after Housing discovers, or has reason to suspect, that one has been received, the tenant must provide the information necessary for Housing to make decisions under the Policy (for example: bank statements, proof of debt etc). Housing will: request such information promptly; keep a precise written record of what has been requested and when; and not ask for anything which the tenant cannot reasonably provide, or which is immaterial in terms of applying the Policy.

36. Any increase in rent following receipt of a windfall payment will be backdated to the first Saturday following the day upon which the windfall payment was received. If the windfall payment was received on a Saturday, the increase will take effect on that day.

#### **EFFECT OF SAVINGS**

37. Information about a tenant's savings will come to Housing's attention when a tenant completes a rent rebate application form (whether for the purposes of claiming a rent rebate or as part of the annual review process).

38. Any increase in rent linked to savings will be backdated to the first Saturday following the date upon which the form was received, unless the savings have exceeded the nest egg because of the receipt of a windfall payment, in which case Paragraph 36 applies.

39. If Housing has reason to believe that a tenant has deliberately withheld information about their savings or purposely delayed the submission of such information in order to fraudulently claim a rent rebate benefit to which they may not be entitled, Housing will request bank statements to determine the point at which the relevant capital threshold was crossed and charge the revised rent from that point.

### **ASSESSING THE VALUE OF A WINDFALL**

40. This section tells you what is and isn't deductible from a windfall when working out how such a payment affects a tenant's rent rebate entitlement and eligibility for social housing.

#### **Formal debt**

41. Living in debt traps people in a cycle of poverty and exacerbates feelings of exclusion and hopelessness. As a signatory to the SPP, Housing has an obligation to both promote economic independence and to prevent poverty and social exclusion. For that reason, a social housing tenant is allowed to use a windfall to clear any formal, pre-existing, registered debts, with only the balance being taken into account when Housing determines the effect of a windfall on their tenancy and rent rebate.
42. Upon receipt of a windfall the tenant is expected to repay money owed to Housing before settling any other debts. Repaid Housing debt is netted off the windfall total.
43. Where a windfall is insufficient to settle the debt in full, Housing expects the tenant to give priority to Housing debt; and then interest-bearing loans and debts resulting from any court orders.

#### **Informal debt**

44. In the context of this Policy, Housing does not recognise as a legitimate debt any commitment that the tenant has made to repay money to friends and family – unless such loans are subject to a legal contract signed prior to the tenant receiving the windfall or learning of its imminent payment. If a tenant chooses to repay such debt, the value of their windfall will not be reduced for the purposes of determining its impact.
45. It is worth remembering that informal family loans would in all likelihood have been offered to the tenant on an interest-free basis, and in the full knowledge that they would be repaid gradually and over a long period of time. The application of this Policy does not change that, and therefore does not leave the family member worse off.

#### **Funeral plans**

46. The cost of pre-purchase funeral plans is not deductible when calculating income or the balance of any windfall.

#### Compensation and court-awarded payments

- 47. Where a court-ordered payment includes an amount of money intended to compensate the recipient for various expenses (howsoever incurred), such an amount shall be ignored by Housing when assessing the impact of the payment.
- 48. Compensation intended to enable to recipient to purchase property is taken into account.
- 49. Compensation intended to cover future medical costs is ignored.
- 50. Backdated child maintenance is taken into account as income received during the period to which it relates.

#### Redundancy payments

- 51. Lump sum redundancy payments are treated as windfall payments.

#### Pensions and occupational pensions

- 52. Regular pension payments are treated in the same way as States pensions.
- 53. Some occupational pension schemes allow the pensioner to opt to receive a one-off lump sum payment; in the context of this policy, such payments are treated as windfalls. This means that, if a tenant opts to receive part of their payment as a lump sum, and that lump sum causes them to exceed their nest egg, it will affect adversely their rent rebate entitlement.
- 54. Because no one can say how long a tenant will claim a weekly occupational pension (or, indeed, remain in social housing), it is impossible to determine whether it is cheaper, from Housing's perspective, for them to opt for a large lump sum payment at the expense of a high-value weekly pension, or vice versa. That being the case, it is left to the tenant to decide how they wish to receive their pension. To help them reach a decision Housing will explain to tenants in this situation how the Capital Sums policy operates.

#### Performance-related bonuses

- 55. Annual and biannual employment bonuses are treated as windfalls. Weekly, fortnightly, monthly or four weekly bonuses are treated as income relating to the week or month in which the money is received. Quarterly bonuses are treated as income for the pay period in which they are received (weekly, fortnightly, four weekly or monthly).

#### Back to Work bonuses

56. Back to Work<sup>1</sup> bonuses, although considered to be windfalls, will be wholly disregarded.

#### Property and material assets

57. Where a windfall is in the form of, or includes, inheritance, property and/or material assets, Housing will take account of the value of those assets when calculating the effect of the windfall on a tenant. Housing will use the date that ownership transfers to the tenant as the effective date to calculate the impact on the tenant's situation. This holds even if the tenant is attempting to sell the property/asset. If property ownership is shared with other individuals, Housing will allow a period of six months for the property to be sold before applying this policy (market value will be taken into account).

#### Dependants

58. If a dependant member of the household receives a windfall this money is taken into account. Any accessible savings in dependants' bank accounts count towards the household nest egg.

#### Calculating impact of windfalls

59. Combining Housing's policy of allowing the repayment of debts with its policy on capital sums creates the following formula, to be used when determining the impact of a windfall payment:

$$([\text{Windfall} - \text{debts and allowable expenses}] + \text{existing capital}) - \text{nest egg} = \text{SUM}$$

60. The 'SUM' is the amount by which the tenant's savings (augmented by a windfall payment which itself has been adjusted to allow for legitimate debts) exceeds the nest egg.
61. If the SUM is a negative figure, the windfall has had no effect because the tenant is left with an amount of money that is less than the nest egg.
62. If the SUM is a positive figure, Housing needs to decide, with reference to the Independent Living Formula and the Five/Ten Year Rule, whether the tenant's tenancy is at risk; and if it isn't, how long their rent rebate should be cancelled.
63. See **Appendix 1** for examples of how the SUM is calculated after a tenant receives a windfall.

### **DIVESTMENT OF WINDFALL PAYMENTS**

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<sup>1</sup> A one off payment, paid to a claimant of Employment and Social Security in certain circumstances.



64. If it appears to Housing that a tenant has for whatever reason taken steps to reduce the size of a windfall payment prior to receiving it, Housing reserves the right to take the maximum possible capital sum into account when determining the effect of such a payment.
65. Similarly, if it appears to Housing that, in anticipation of receiving a windfall payment, a tenant or their partner has incurred debt that they would otherwise not have incurred, or given up work, or reduced the hours that they work, Housing reserves the right to ignore that particular debt when determining the value of the windfall.
66. Unless there is evidence of a formal written agreement which predates the windfall, monies given to a third party will not be discounted for the purposes of the capital sum calculation. This includes circumstances where there is an alleged verbal agreement or understanding between the tenant and the third party that any windfall will be shared between them.

### **THE INDEPENDENT LIVING FORMULA**

67. Housing works out how long a tenant, their partner and their dependants can support themselves outside of social housing by applying an Independent Living Formula.
68. The formula works as follows. Housing:
- looks at the tenant's household earnings and the balance of their capital (i.e. the 'SUM' figure, above);
  - looks at the household's income threshold; and
  - works out how many weeks the SUM figure could supplement the household's actual income in order to bring the household to its income threshold.

If the result of this calculation is that the tenant could have an income equivalent to the household's income threshold for a period of five or ten years (depending on the tenant's age) or more, Housing will move to terminate the tenancy.

NB: Overtime does not count towards household income in this context unless it is contractually guaranteed for the foreseeable future.

69. The Independent Living Formula is therefore:

$$\text{SUM} / (\text{income threshold} - \text{actual weekly net income}^2) = \text{number of weeks}$$

***Independent living***

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<sup>2</sup> For example: earnings, maintenance, family allowance etc. Means-tested benefits such as SPB will be ignored IF the Social Security Department have cancelled, or intend to cancel, the tenant's claim. The removal of SPB and the consequent drop in weekly income leads to the tenant becoming more reliant on their savings, accelerating to speed with which those savings are reduced to the point where they become re-eligible for SPB and social housing.

70. When calculating income for the purposes of working out how long savings will last, a net figure is used. Start with the gross income for the whole household (excluding non-dependants) and then deduct income tax; social insurance; childcare costs (relating to hours when all adult carers are at work); court-ordered maintenance payments (paid out, not received); payments to registered trade unions; and any money paid into a pension fund, whether an occupational pension or a secondary pension or otherwise.
71. Severe Disability Benefit and Fostering Allowance are not classed as income, but all other benefits, including Family Allowance, count towards the calculation of total household income.
72. See **Appendix 2** for examples of the application and effect of this formula.

### **EFFECT OF CAPITAL ON RENT REBATE ENTITLEMENT**

73. If the Independent Living Formula shows that the tenant, if asked to leave social housing, would become eligible to reapply in less than five or ten years (as applicable – see above), their tenancy is not at risk; however their capital is likely to render them ineligible for a rebate as a result of Housing expecting them to use some of their savings to pay the Standard Weekly Rent.
74. In calculating for how long a tenant should be refused the opportunity to apply for a rent rebate (in essence, how long a tenant is expected to use their capital to compensate for the loss of a rebate) Housing looks to the household's income threshold.
75. Housing considers it unfair to expect a tenant to draw upon their savings to such an extent that, on a week to week basis, it would leave them with an income less than the maximum allowed under the relevant income threshold.
76. The point at which a tenant becomes re-eligible to apply for a rent rebate depends on the speed with which they draw down on their capital; in other words, on the rate of depletion. The means by which Housing calculates the rate of depletion is identical to the Independent Living Formula.
77. Where a tenant has an income, the SUM is used to meet the shortfall between the tenant's actual net income and their income threshold. The formula below takes into account the fact that tenants with income will be able to use that income to help support themselves.

$$\begin{aligned} & \text{Income threshold} - \text{actual net income} = \text{weekly shortfall} \\ & \text{SUM} / \text{weekly shortfall} = \text{weeks without rebate entitlement} \end{aligned}$$

### **EARLY PAYMENT OF RENT ('PAYING AHEAD')**

78. A Housing tenant who temporarily loses their entitlement to a rent rebate as a result of a windfall payment is encouraged to settle in advance the amount of rent they will be charged over the duration of the cancellation period. For example, a tenant who is told that she will be re-eligible to apply for a rent rebate in 20 weeks will be invited to pay 20 weeks' rent at the full rate; that way, she can spend the remainder of her windfall more freely without worrying – or causing Housing to worry – that she will run out of money early and struggle to pay her non-rebated rent.
79. Housing incentivises paying ahead by committing to protect the tenant from any increases in the standard weekly rent that might take place during the rebate cancellation period.

### **EXCESS CAPITAL UPON RE-APPLICATION FOR REBATE BENEFIT**

80. If, upon reapplication for a rebate, a tenant still has savings in excess of the relevant nest egg, the Independent Living Formula is re-applied and a new rebate application date is given.

### **EFFECT ON SUPPLEMENTARY BENEFIT ENTITLEMENT**

81. Given that entitlement to supplementary benefit is suspended if claimants have assets in excess of Employment and Social Security's Capital Limits, it is likely that a social housing tenant who receives a windfall payment and loses their rent rebate will also lose their entitlement to benefit. In the unlikely event that benefit remains payable, or becomes payable prior to the tenant requalifying for a rebate, Social Security is expected to grant an allowance for rent that is equal to the rebated rent being charged prior to the windfall. (If Social Security were to award an allowance equal to standard weekly rent – being the rent that the tenant is actually being charged – the tenant's benefit would increase and they would become a greater cost to the States than they were prior to the windfall payment.)
82. See **Appendix 3** for examples.
83. Where a tenant who would be eligible to claim for an SPB top-up following a windfall chooses not to make a claim for SPB, rates of depletion will be based on Short Term Requirement Rates and include a notional rent charge.<sup>3</sup>

### **TRUST FUNDS**

84. Where a tenant, their partner or a dependant member of the household has money placed into a trust fund by a third party (e.g. following an inheritance), such monies shall not be taken into account until such time as the capital funds are released/accessible to them.

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<sup>3</sup> Notional rent charges are calculated in accordance with Housing rent rebate tariffs and take into account household composition and associated charges.

85. If, however, it appears to Housing that an applicant or a tenant (or a member of their family) has deliberately placed money into a trust fund for the purposes of securing or retaining a tenancy, or obtaining a rent rebate larger than would otherwise be the case, it reserves the right to include that money in any income/windfall calculation.

### **NON-DEPENDANTS**

86. When calculating the impact of a windfall received by the tenant, their partner or their dependants, Housing ignores the accommodation needs and the income of any non-dependants in the household.
87. If a non-dependant receives a windfall, the tenant must inform Housing immediately. The non-dependant charge being applied to the tenant's rebated rent increases to £115 a week or by an amount sufficient to match the SWR. The charge increases to the maximum amount until the windfall has been depleted.
88. If the tenant is not claiming a rebate, no further action is taken.
89. As with tenants, non-dependants are permitted to clear formal debts with their windfall. The amount of debt repaid will be deducted from the windfall for the purposes of calculating their SUM. A key difference, however, is that non-dependants are not permitted to have a 'nest egg'.
90. The maximum non-dependant charge is 15% up to a maximum of £115 a week (at 2016 rates). Under normal circumstances, to be charged £115 a week a non-dependant would have to earn a gross weekly income of £766.70 – an amount which would preclude them from applying for social housing in their own right. If a non-dependant receives a windfall, the non-dependant charge will increase to the maximum amount for a pre-determined length of time.
91. The length of time is calculated by assuming that the maximum charge is equivalent to 15% of non-dependant's gross weekly income. In 2017, that would mean an assumed weekly income of £766.70.
92. Any actual income earned by the non-dependant is subtracted from that notional figure, and their SUM is used to 'top-up' their income to the assumed level. Thus, the depletion rate is calculated by way of dividing the SUM by the shortfall.

#### **Example**

93. A non-dependant has a windfall of £7,000. They have £2,000 owing on a credit card, and a weekly income of £220. At present, the non-dependant charge on the property is £33 per week.

$$\begin{aligned} &£7,000 - £2,000 \text{ [formal debt]} = £5,000 \text{ [SUM]} \\ &£766.70 \text{ [assumed gross income]} - £220 \text{ [gross income]} = £546.70 \text{ [shortfall]} \end{aligned}$$

$$£5,000 / £546.70 = 9$$

The tenant will be charged the maximum non-dependant charge of £115 for nine weeks.

### **TAKING ACCOUNT OF UNDER-OCCUPANCY**

94. Housing is aware that there are a number of tenants who are currently under-occupying social rented housing properties. When under-occupancy is discovered, the tenant is placed on the transfer waiting list for a smaller property. In the meantime, they will continue to occupy the larger (and therefore more expensive) property. This does not tend to present an issue for tenants, because their Rent Rebate entitlement shields them from the higher SWR due on the property.
95. If an under-occupying tenant receives a windfall, or saves enough money to cross the upper capital threshold, the cost of them living outside of social housing (calculated in order to determine the period of time they will be expected to pay the standard weekly rent and to apply the Five or Ten Year Rule) will take account of their need for a property to accommodate them and not any non-dependants. (For example, if a single female tenant lives with her adult son in a two bedroomed property, Housing will treat her as under-occupying and assess the effect of her savings based on her need for a one bedroomed unit of accommodation.)
96. In the first instance, the Independent Living Formula will be applied based on the tenant's *need*. If the tenant could support themselves (not their non-dependant) outside of social housing in a one bed property for more than five or ten years (depending on their age), the tenancy will be terminated.
97. If it less than five/ten years, then under normal circumstances this period of time is commensurate with how long the tenant is ineligible for rebate. However, because the SWR on the tenant's current property is higher than it would be if they were in the correct size of property, this would disadvantage the tenant. Instead, a second calculation is applied:

*Number of weeks x average SWR on the correct size property = Total amount payable*

*Total amount payable/SWR current property = Number of weeks cancellation of rebate*

#### **Example One**

98. A single tenant lives alone in a three bed property. They are on the transfer waiting list for a one bed property, as they only require one bedroom. They have a weekly net income of £230, no debts, and no savings. The SWR for the 3 bed property they are currently occupying is £265. At present, they are claiming a Rent Rebate of £210 each week, and paying £55 on rent. After their nest egg, they have a SUM of £25,000

### Independent Living Formula

$$£410 \text{ [needs-based income threshold]} - £230 = £180$$

$$£25,000/£180 = 138$$

*The tenancy should not be terminated, as the figure is less than 156 weeks.*

### Rebate Cancellation

$$138 \text{ [number of weeks]} \times £153 \text{ [average one-bed SWR]} = £21,114 \text{ [total payable]}$$

$$£21,114 / £265 \text{ [current SWR]} = 79$$

*The tenant will pay full SWR on the 3 bed property for 79 weeks. They will not be eligible for a rebate during that time.*

Housing will endeavour to find an appropriate property for the tenant. If one is offered to the tenant, and they refuse without reasonable grounds,<sup>4</sup> then they will be reassessed based solely on need. In this instance, Housing will no longer account for the SWR of the property the tenant is actually in, and will use their needs-based income threshold to calculate the depletion rate for the remaining capital.

### Example Two

99. 26 weeks have passed since the tenant in Example One was assessed. She has been paying SWR on the 3 bed property since then. She is offered a one-bed property in a suitable location, but she refuses to move. Her grounds for refusal are not considered to be reasonable. She will now be reassessed based on her need.

Housing has, for the past 26 weeks, considered the tenant to have a depletion rate of £180 per week (i.e. the weekly shortfall based on the tenant's new income threshold). Therefore, her SUM should be depleted as follows:

$$26 \times £180 = £4,680$$

$$£25,000 \text{ [original SUM]} - £4,680 = £20,320$$

She will be reassessed from today, based on need, and an assumed SUM of £20,320. Therefore her new depletion rate is:

$$£410 \text{ [needs-based income threshold]} - £230 = £180$$

$$£20,320/£180 = 112$$

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<sup>4</sup> 'Reasonableness' must be documented in writing; signed off either by the Director of Housing or their deputy; and then: attached to the tenant's file notes; communicated to the tenant in writing; and (once suitably anonymised) attached to this policy as an example, so as to create a body of casework that will inform future decision making

*The tenant will pay full SWR on the 3 bed property for the next 112 weeks. If she had not been reassessed, she would have become eligible to apply for a Rent Rebate again in 53 weeks.*

## **TRANSFERRING TO A SMALLER PROPERTY**

100. Where a tenant relocates at Housing's request to a smaller property, any capital/savings/windfall assessments relating to rebate entitlement that had been carried out prior to a move shall be reassessed from the start of their new tenancy. Previous depletion rates will apply to any new calculations and Housing will exclude any essential costs directly relating to their house move.

## **"PREMATURE" RENT REBATE APPLICATIONS**

101. From time to time a tenant who has had their rent rebate claim cancelled as a result of receiving a windfall payment will attempt to make a new rebate claim before the end of the cancellation period (although it is accepted that the chances of this happening are reduced as a result of Tenancy Management Officers encouraging tenants to pay the whole period in advance – see above).
102. To further reduce the likelihood of these situations arising, TMOs request that after declaring savings and/or that they have received a windfall, tenants sign a statement confirming that they understand that they will be charged standard rent for a certain period of time, and that rebate applications made ahead of time will be rejected. The statement will also confirm that the tenant has been advised by the TMO that spending their windfall more quickly than the rate of depletion anticipates (whether it be on gifts, repaying informal debts and so on) will not allow them to claim a rebate early: they will be treated as though they have still have the funds, and are spending at the depletion rate.
103. Housing reserves the right in exceptional circumstances to reinstate a rent rebate earlier than the formula above would otherwise allow. Such a decision is taken by either the Director of Housing or a designate in response to a written recommendation from the Tenancy Manager. Details of every exception, suitably anonymised, must be appended to this policy so as to inform its development.

## **FAILURE TO DECLARE A WINDFALL PAYMENT OR SAVINGS**

104. A tenant who fails, or who is suspected of failing, to declare a windfall payment or savings will be investigated in the normal manner. Penalties for failing to declare a windfall payment or savings are determined in line with prevailing legislation.

## **TREATMENT OF CAPITAL UPON APPLICATION**

105. Occasionally, Housing will receive an application from someone who has spent a windfall payment and who now has savings below the nest egg. Housing does not pass judgement on whether or not an applicant has spent their money sensibly or

appropriately; by and large, the capital declared is taken at face value. There are exceptions to this approach:

106. Applicants who moved out of social housing as a result of receiving a windfall payment are not eligible to reapply earlier than originally directed by Housing, unless unforeseen circumstances have led the ex-tenant to use their savings more quickly than anticipated. Such a decision must be recorded in writing and, before being implemented, be approved by the Director or Deputy Director of Housing.
107. Where it appears to Housing that an applicant has divested themselves of income for the purposes of becoming eligible for social housing, the application will be rejected. Housing will use the Independent Living Formula to calculate how long the applicant would have been able to live outside of social housing had they not divested themselves of income, and will invite them to reapply thereafter. The applicant must be given this decision in writing.
108. The Allocations Policy states that applicants who have previously owned property are ineligible for social housing, which implies that assets related to property should be taken into account. The Social Rented Housing Income Thresholds Policy gives more details of when such assets can be ignored or partially ignored.
109. Applicants who declare capital in excess of the relevant nest egg are not eligible for social housing. In such circumstances Housing would determine a depletion rate using the Independent Living Formula, using figures relating to the applicant's actual situation to calculate how long they should be able to live outside of social housing before being disadvantaged financially compared to social housing tenants; and will encourage\* them to reapply at the end of that period of time. Whether or not they are eligible at that point will depend on their prevailing circumstances and finances. Again, all decisions must be communicated to the applicant in writing.
110. \*'Encourage' does not mean the same as 'insist' or 'direct' (insisting that an applicant delay their application for a specific amount of time would be at odds with the policies described above); but if the applicant reapplies earlier than suggested, Housing will ask to see bank statements in an effort to satisfy itself that they have not divested themselves of income purely for the purposes of qualifying for social housing. Re-applications will not be accepted before the date given in Housing's rejection letter unless unforeseen circumstances have led to an applicant using their savings more quickly than anticipated. Such a decision is taken by the Tenancy Manager or their deputy, in response to a written recommendation from the Allocations Officer. Details of every exception, suitably anonymised, must be appended to this policy so as to inform its development.

## **APPEALS**

111. In accordance with Housing's Appeals Policy, tenants can request an internal review of a decision if they have reasonable grounds on which to do so. The definition of 'reasonable grounds' is limited to situations where the household's circumstances



were not accurately recorded by Housing (but the tenant provided all information requested), or where they consider an error to have been made in calculations. This does not include situations where a tenant does not agree with the decisions made, or where they feel the Policy is unfair

112. In the event that the outcome of the Capital Sums process is that a tenant is asked to leave a property, or there is an impact on their Rent Rebate Benefit, the tenant has the right to make an appeal to the Housing Appeals Tribunal. Tenants should be encouraged to request an internal review in the first instance, however they are not obliged to do so.
113. The Housing Appeals Tribunal will only overturn decisions where an error was made, or where due process was not followed.

### **HISTORIC DECISIONS**

114. Some tenants with substantial capital were assessed under an 'interim' capital sums policy, which existed between 2015 and 2017, and were told that their tenancy would not be terminated. The new policy will not override any decisions taken during this interim period.

**This policy was last reviewed in March 2017**

**Calculating the value of a windfall****Example One**

A tenant, who lives with his wife in a one bedroom property, receives an £80,000 inheritance. As a household, they owe £2,100 on a credit card – the result of money borrowed well in advance of the inheritance – and have a savings account with a balance of £4,500.

$$\begin{aligned}£80,000 \text{ [windfall]} - £2,100 \text{ [debts]} &= £77,900 \\£77,900 \text{ [reduced windfall]} + £4,500 \text{ [existing capital]} &= £82,400 \\£82,400 \text{ [adjusted capital]} - £13,000 \text{ [nest egg]} &= £69,400 \text{ [SUM]}\end{aligned}$$

Housing will use the SUM figure of £69,400 when determining how the tenant's windfall should be treated.

**Example Two**

A tenant wins £5,000 on a scratch card. She has no debts, and no savings. Because her windfall is less than her nest egg, Housing will take no action.

## Examples of the Independent Living Formula

### Example One

A single tenant aged 38 has a SUM of £80,000 and a net salary of £220 per week. They are not in receipt of any other benefits and do not have any special requirements such as childcare costs. The income threshold for a single person is £420.

$$\begin{aligned}£410 - £220 \text{ (net salary)} &= £190 \\£80,000 / £190 &= 421\end{aligned}$$

This tenant could reasonably be expected to support themselves privately for 421 weeks, i.e. more than five years. Housing would therefore terminate this tenancy.

### Example Two

A single tenant aged 50 has a SUM of £140,000 and is entirely reliant on Supplementary Benefit. Her benefit ceases upon receipt of the windfall, as they are in excess of ESS's capital limit. The 2017 income threshold for a single person is £410.

$$£140,000 / £410 = 341$$

The tenant can reasonably be expected to support herself in private accommodation for 341 weeks, i.e. more than five years. Housing would therefore terminate this tenancy.

### Example Three

A single tenant aged 42 has a SUM of £50,000 and is entirely reliant on Supplementary Benefit. Her benefit ceases upon receipt of the windfall, as they are in excess of ESS's capital limit. The 2017 income threshold for a single person is £410.

$$£50,000 / £410 = 121$$

The tenant can reasonably be expected to support herself in private accommodation for 121 weeks; less than five years. Her tenancy would continue, although she would be charged standard weekly rent for 121 weeks.

### Example Four

A couple, the oldest of whom is 54, are living in a two bedroom property, has a SUM of £50,000. One of them is working and has a net weekly income of £370. The income threshold for a couple with a need for a two bedroom property is £580.

$$\begin{aligned}£580 - £370 &= £210 \\£50,000 / £210 &= 238\end{aligned}$$

The couple can be expected to use the SUM to supplement their income and live in non-subsidised accommodation for 238 weeks; just under five years. Housing would not terminate their tenancy.

## Examples of the effect of windfall payments on supplementary benefit

### Example One

A tenant has a SUM of £7,000 and a net income of £190 per week. They do not claim any other benefits. Prior to receiving a windfall payment they were charged a rebated rent of £62 (their standard weekly rent of £153 is reduced by £91). In calculating how long they can afford to pay the standard rent (i.e. how long they will be refused a rent rebate), Housing makes the following calculation:

$$\begin{aligned}£410 [\text{income threshold}] - £190 &= £220 \\£7000 / £220 &= 31\end{aligned}$$

In this example, the tenant would be expected to pay the standard rent for 31 weeks, after which they would be eligible to reapply for a rebate. A depletion rate of £220 means that, even allowing for the £91 increase in housing rental costs, the tenant is £129 per week better off as a result of the windfall.

### Example Two

A single social housing tenant has a SUM of £5000 and, before the windfall payment, relied entirely on benefits. Before the windfall they were charged a rebated rent of £78 (their standard weekly rent of £153 is reduced by £75). In calculating their SPB entitlement, SSD were giving them a rent allowance equal to the rebated rent: £78.

In order to calculate their new SPB top-up, SSD will assume a 'notional income' from the SUM of £81 per week<sup>5</sup>. Thus they would receive £92.83 in SBP top-up (£173.83<sup>6</sup> - £81). They continue to receive £78 of rent allowance, giving them an income of £173.83

$$\begin{aligned}£410 [\text{income threshold}] - £173.83 [\text{income}] &= £236.17 \\£5000 / £236.17 &= 21\end{aligned}$$

Housing will account for the tenant's actual income, and will cancel rebate for 21 weeks. SSD will not increase the tenant's rent allowance to meet their new, non-rebated rent.

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<sup>5</sup> Assumed weekly income rate from ESS

<sup>6</sup> The Supplementary Benefit Requirement Rate (SPBR) for a single person 2015

## **Figures for calculations<sup>7</sup>**

### **2017 household income thresholds**

*2017 Supplementary Benefit long term weekly requirement rates:*

<b>Single householder</b>	<b>Cohabiting couple</b>	<b>Dependant</b>
£173.83	£251.25	£70.71

*2016 average local market private weekly rent:<sup>8</sup>*

<b>One Bed</b>	<b>Two Bed</b>	<b>Three Bed</b>
£210	£303	£413

*2017 fuel allowance:*

<b>Weekly</b>	<b>Pro-rata</b>
£26.03	£13.02

*2017 rates allowance:*

<b>Weekly</b>
£8.68

*2017 social housing income thresholds:*

<b>Household composition</b>	<b>Weekly net threshold</b>	<b>Annual net threshold</b>
Single, childless, 1 bed	£410	£21,320
Single, childless, 2 bed	£500	£26,000
Couple, childless, 1 bed	£490	£25,480
Couple, childless, 2 bed	£580	£30,160
1 child	£650	£33,800
2 children	£830	£43,160
3 or more children	£900	£46,800

*2017 Severe Disability Benefit:*

<b>Weekly</b>
£101.08

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<sup>7</sup> All figures rounded up to nearest £10

<sup>8</sup> Figures based on average Private Sector Rentals for Q4 2015 and Q 1, Q2 and Q3 2016

