

HOUSING SYSTEMS: BRIEFING

No.5 / 2020:

Universal Credit and Market Rents

Introduction

Many Social Landlords now let properties at a 'market rent'. This fills an ever growing gap in the housing market for those who do not qualify for social housing but who are struggling to rent a property from a commercial agent or to get a mortgage to become a home owner.

Generally market rent tenants have a stable income and do not need to look to welfare benefits to help them pay their rent.

However, due to the current economic situation of reduced hours and redundancies, many 'market rent' tenants are now making new claims for Universal Credit.

As they are liable to pay rent, their Universal Credit award will include a Housing Costs Element.

But

Should the claimant tick the box on the UC claim form that says 'I rent from a council or housing association' or 'I rent from a private landlord'?

When the DWP assess the amount of their Housing Costs Element - will their market rent fall under the social rented sector rules or the private rented sector Local Housing Allowance rules?

And what does this mean for the landlord in terms of using the Landlord Portal for these claimants?

Social Rented Sector rules v Private Rented Sector rules

Under the social rented sector rules, the DWP would look at the full eligible rent being charged (ie ignoring any ineligible services) and apply any Bedroom Tax reduction and any Housing Costs Contribution (non-dependant deduction) that applies.

The landlord would verify the rent via the Landlord Portal and also use the Portal for applying for APA Managed Payments.

Under the private rented sector rules, the DWP would take the lower of the full gross rent being charged and the applicable Local Housing Allowance rate and then apply any Housing Costs Contribution (non-dependant deduction) that applies.

The landlord would not be able to use the Landlord Portal, making rent verification and applications for APA Managed Payments more difficult

So as well as there being a different 'relationship' between the landlord and the DWP, there could be a difference in the amount of Housing Costs Element included in the claimant's award.

So which rules do ‘market rents’ fall under?

The answer is not always straightforward!

Some organisations have established commercial subsidiaries to develop and manage their portfolio of market rented accommodation, clearly separating out their social and commercial functions. Others have continued to operate as one business where market rent is just one of a number of different options they offer.

The Social Sector Housing rules apply where:

- The claimant’s landlord is a Local Authority or non-profit Registered Provider of social housing (applicable in England) / a Registered Social Landlord (applicable in Scotland or Wales).

It is not the fact of being a ‘market rent’ tenancy that determines whether the Social Sector Housing rules apply: it is who is the landlord, not what type of tenancy it is, that matters.

The DWP might say otherwise – but see Standard Letter UC HC11.

The Local Housing Allowance rules apply where:

- The claimant’s landlord is a for-profit Registered Provider of social housing (England only) ie they can distribute profits to shareholders/members, and the tenancy is a ‘market rent’ property.

(If the landlord is a for-profit RP it is the type of tenancy that matters. If the tenancy is ‘social housing’ (ie below market rent, and made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market) then even if it is provided by a for-profit RP, it would fall under the social rented sector rules instead).

or

- The claimant’s landlord is a private company: this includes those that are a separate subsidiary of a Registered Provider of social housing / Registered Social Landlord that have a wholly-owned trading entity that is not a Registered Provider - ie those registered as a private company with Companies House.

For example, Blissful Homes is a private company which is wholly owned by Happy Homes, which is a non-profit RP. Because Blissful Homes has its own legal identity and is not in itself a Registered Provider of social housing, its tenants would be subject to LHA. But any tenants of Happy Homes would fall under the social rented sector rules.

Frequently Asked Questions

We have been told to reject all requests to verify 'market rents' that come through the Landlord Portal and tell our 'market rent' tenants to tick the box that says they are a private tenant. Is this correct?

At the end of the day it is up to the DWP which tenancies they choose to verify by using the landlord portal. However, assuming they are happy that all social housing tenancies are verified this way then the answer to your question will depend on who their landlord is.

If their landlord is a local authority, or a non-profit Registered Provider of social housing (applicable in England) / a Registered Social Landlord (applicable in Scotland or Wales) then it does not matter if it is a 'market rent' tenancy: their Housing Costs Element fall under the Social Housing Sector rules – they are certainly not a private tenant and should not tick the box to say they are.

If, however, their landlord is a private company, or a profit-making Registered Provider of social housing and their rent is at market rents levels, then the DWP would be right. They are a private tenant for UC purposes and should complete the claim form as such and would be excluded from the Landlord Portal.

We have a market rent tenant who is claiming UC. Although the tenancy is with a non-profit Registered Provider of social housing, we followed the advice from the DWP and explained that the tenant needed to tick the box that said they were a private tenant. Their UC award has just come through and it looks like the DWP have used the LHA rates when assessing the Housing Costs Element. Is this correct?

No. If the tenancy is with a non-profit Registered Provider of social housing then the UC claimant's Housing Costs Element should be assessed under the Social Housing Sector rules.

The claimant needs to get this sorted as they could be being underpaid or overpaid. They should request a Mandatory Reconsideration of the way their Housing Costs Element has been assessed – they can use our Standard Letter xx as a basis for this.

Do the LHA rules apply to our market rented stock – we charge our rents monthly?

That all depends on who the landlord is – it does not matter whether you charge rents weekly or monthly.

If the landlord is a local authority, non-profit Registered Provider of social housing (applicable in England) / a Registered Social Landlord (applicable in Scotland or Wales) then it does not matter if it is a 'market rent' tenancy: their Housing Costs Element falls under the Social Housing Sector rules and not the LHA rules

If, however, the landlord is a private company, or a profit-making Registered Provider of social housing and their rent is at market rents levels then the LHA rules would apply.

How do we apply for an APA managed payment where a market rent tenant is classed as having a private landlord?

The Landlord Portal can only be used to verify / apply for APA Managed Payments of social housing tenants.

So where, due to the nature of the landlord, the tenant is classed as being a private tenant, the landlord cannot use the Landlord Portal.

Instead Landlords that do not have access to the Landlord Portal have, since May 2020, been able to apply for an APA Managed Payment online (prior to this it was by sending the DWP a UC47 form by email).

[Click here.](#)

What about affordable rent and intermediate market rents?

Affordable rents and intermediate Market Rents are by definition rents charged below the market rent.

So these will only fall under the LHA rules where the landlord is a private company – including those that are a separate subsidiary of a Registered Provider of social housing / Registered Social Landlord that have a wholly-owned trading entity that is not a Registered Provider - ie those registered as a private company with Companies House.

So how does the DWP control how much rent a non-profit making provider of social housing charges?

The DWP have the power to refer the tenancy to the Rent Officer for a valuation if they believe the high charge by Registered Providers to be unreasonably high.

What the UC Regulations Say

Schedule 4 of the Universal Credit Regulations provides for the calculation of the amount of a UC claimant's Housing Costs Element:

Part 3 contains general provisions that apply to all calculations, whether under Part 4 or Part 5;

Part 4 applies in relation to renters who occupy accommodation in the private rented sector; and

Part 5 applies in relation to renters who occupy accommodation in the social rented sector.

Part 4 of Schedule 4 of the UC Regs 2013 states (the parts in bold are our emphasis):

PART 4 Private rented sector

Application of Part 4

*20. (1) This Part applies to renters who are liable to make rent payments to a person **other than a provider of social housing**.*

(2) Sub-paragraph (1) applies irrespective of whether renters are also liable to make service charge payments.

And paragraph 2, Part 1 of Schedule 4 gives the definitions:

“provider of social housing” means—

(a) a local authority;

*(b) **a non-profit registered provider of social housing;***

(c) in relation to accommodation which is social housing, a profit-making registered provider of social housing;*

*(d) **a registered social landlord;***

** and social housing for the purpose of para (c) is defined as “social housing” and has the meaning given in sections 68 to 77 of the Housing and Regeneration Act 2008”*

Therefore where a claimant's landlord is a non-profit making provider of social housing or a Registered Social landlord, regardless of the rent being charged, they would not fall under Part 4 of Schedule 4, but Part 3 - ie they would not fall under the Local Housing Allowance rules.

UC HC11: REQUEST TO USE THE SOCIAL HOUSING SECTOR RULES TO ASSESS AMOUNT OF HOUSING COSTS ELEMENT

Claimant's Name
Claimant's Address

DWP Office

Date:

Dear Sir or Madam

RE: UNIVERSAL CREDIT AWARD – HOUSING COSTS ELEMENT

Nino:

I understand that when assessing the amount of the Housing Costs Element included in my award you have applied the Local Housing Allowance rules - ie you have treated me as living in the private rented sector.

However I understand that as my landlord is a non-profit making provider of social housing / Registered Housing Association you should have used the social rented sector rules.

This is confirmed in Schedule 4 para 20 (1) of the Universal Credit Regulations which states that the private rented sector rules apply *'to renters who are liable to make rent payments to a person **other than a provider of social housing.**'*

I believe I am liable to make rent payments to a provider of social housing.

My landlord is XXXXXXXXXXXXX, who is:

- ☐ a local authority;
- ☐ a non-profit Registered Provider of social housing;
- ☐ a registered social landlord;
- ☐ in relation to accommodation which is 'social housing', a profit-making Registered Provider of social housing; where 'social housing' is defined as having the meaning given in sections 68 to 77 of the Housing and Regeneration Act 2008 - ie where the rent being charged is below market rent, and made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

- and therefore they fall within the definition of a 'provider of social housing' as outlined in Schedule 4 para 2.

I would therefore be grateful if you reassess the Housing Costs Element included in my Universal Credit award from the start of my claim using the social rented sector rules as these apply in my case.

If you wish to continue to use the private rented sector rules then please could you could treat this letter as a request for a Mandatory Reconsideration of your decision to continue to apply those rules and provide me with a Mandatory Reconsideration statement so that I can take this issue to appeal.

Thank you for your consideration of this matter.

Yours faithfully

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