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**Combating Housing Benefit Fraud:  
Local Authorities' Discretionary Powers**

**A study carried out on behalf of the  
Department of Social Security**

**by**

**Roy Sainsbury**

**Social Policy Research Unit, University of York**

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## EXECUTIVE SUMMARY

### 1. Introduction

Local authorities have a range of discretionary powers which can be used in the administration of Housing Benefit. This study evaluates authorities' use of discretionary powers in two areas:

- stopping or refusing direct payments to landlords who are not 'fit and proper' persons to receive them (under regulations in force since November 1997); and
- suspending payments of benefit to claimants whose continuing entitlement is uncertain (under regulations in force since November 1997).

The research methods comprised visits to 18 local authorities during which face-to-face interviews were conducted with Housing Benefit managers, assessment staff and fraud officers, and a telephone survey of Housing Benefit managers in all authorities in Great Britain. Successful interviews were conducted 305 local authorities, a response rate of 75 per cent.

The Department of Social Security commissioned this research to monitor the early impact of new regulations aimed at countering landlord and claimant fraud.

From 3 November 1997 new regulations made under existing powers gave local authorities new abilities to combat Housing Benefit fraud, including the power to stop or refuse to make direct payments of benefit to landlords who are considered not to be 'fit and proper' persons, and extended powers to suspend payments from claimants where entitlement is uncertain.

The intention behind the new powers in relation to landlords is that when a landlord's probity is in doubt when a direct payment is either mandatory or made under discretionary powers, the 'fit and proper' test should be applied. Under the test, a local authority has to be satisfied that a landlord is fit and proper to receive a direct payment. If the authority is *not* satisfied it can refuse to pay Housing Benefit direct to the landlord.

DSS guidance on what constitutes 'not fit and proper' suggests that local authorities could take into account any of the following circumstances:

- the landlord has been engaged in fraudulent activity in the past (the activity must be related to Housing Benefit only, other fraudulent activity must not be taken into consideration)
- failure to report changes in circumstances
- failure to repay recoverable overpayments.

The regulations also increase the options open to local authorities when there is some suspicion that a Housing Benefit recipient is no longer eligible for Housing Benefit. For some time local authorities have had the power to withhold payment of benefit under the Housing Benefit Regulations 1987. The new regulations allow them to suspend benefit if, upon a reasonable investigation, there is doubt about the claimant's continuing entitlement. Furthermore, the suspension is linked to a requirement on the claimant to provide information to the local authority which can be used to establish entitlement.



## **2. Local authorities' use of the new powers to stop direct payments to landlords**

Of the 305 local authorities in the survey, 49 (16 per cent) had used the new powers since their introduction in November 1997. London Boroughs and the Metropolitan authorities were quicker to start using the new powers but still only around one in four of these authorities had stopped any direct payments.

Most authorities (30) had only dealt with a single landlord under the new powers. The total number of landlords dealt with was estimated at 87. The number of claimants affected in these 87 cases was estimated at 630. Landlords with multiple tenants were therefore more likely than single landlords to be the subject of the new powers.

The principal reasons why local authorities were applying the new regulations were the same as those mentioned in the DSS guidance, i.e. previous Housing Benefit fraud by a landlord, failure to report changes in circumstances, and failure to repay overpayments. Other factors considered by local authorities included: a landlord having other debts owing to authority, a landlord's properties being poorly maintained, a landlord using threatening or abusive language or behaviour to local authority staff, and a landlord having a criminal record.

The DSS guidance emphasises that matters unconnected with Housing Benefit should not be a factor in assessing a landlord's probity and states clearly that authorities expose themselves to legal challenge if they do. The survey findings suggest that some local authorities may be straying into uncertain territory if they take into account factors such as a landlord's non-Housing Benefit debts, criminal record, the state of their accommodation, and their treatment of local authority staff.

In most local authorities, decisions about whether a landlord is 'fit and proper' is taken by either supervisory or managerial staff rather than assessment or fraud staff.

When their direct payments had been stopped, some landlords were reported to have reacted in ways that are undesirable for claimants or for the local authority and its staff. Ten authorities reported instances of landlords evicting tenants or refusing to take benefit recipients. In five authorities, landlords had taken legal action (these were either London Boroughs or metropolitan authorities). The outcomes of such action are not yet known.

## **3. Characteristics of local authorities which had not used the new powers to stop direct payments**

Of the 305 local authorities in the survey, 256 (84 per cent) had not used the new powers to stop direct payments to landlords since their introduction in November 1997.

The predominant reason put forward by Housing Benefit managers for not stopping direct payments was that no relevant case had arisen in their authority. Other reasons included:

- authority is in the process of developing necessary policies or procedures
- difficulties in finding sufficient evidence to justify stopping direct payments
- authority uses other existing powers to combat landlord fraud
- authority lacks resources to carry out necessary investigations.

Although the most common reason for not stopping direct payments was that the need to had not arisen, the survey also showed that most authorities could identify a number of 'problem' landlords in their areas. These apparently conflicting findings are probably partly the result of the timing of the survey six months after the powers came into force. New or renewal claims from tenants of problem landlords might not have been received within the survey period.

#### **4. Views about the new powers to stop direct payments**

A majority of Housing Benefit managers expressed positive views about the impact of the new powers, with little difference between the authorities who had used them and those who had not. The number of authorities expressing at least one positive comment on the new powers was 35 (71 per cent) of the authorities who had used them, and 190 (74 per cent) of those who had not.

Four out of five authorities, regardless of whether they had had any experience of using them in the past, reported that they expected to use the powers in the future. Ten per cent (27 authorities) said that they would not be using the powers (or using them more). Of these, 13 reported that they had no problem landlords in their areas.

Some Housing Benefit managers who did not think the powers to stop direct payments would have a major impact on tackling or deterring fraud still reported that they would make use of the powers in the future.

#### **5. Local authorities' use, and non-use, of the new power to suspend benefit**

Of the 305 local authorities in the survey, 261 (86 per cent) had withheld/suspended payments to claimants, of whom 90 (30 per cent of the whole sample) had used the new power. London Boroughs had used the new powers more than other types of authority.

Of the authorities who had used the new powers in the first six months since they came into force, most used them in relatively few cases. Some authorities, however, were comparatively big users, seven reporting using them in over 100 cases. Of these seven, four were coastal authorities where claimant populations are generally more transient than other authorities.

Claimants must be given four weeks at least to respond to a request for information to support their claim, but local authorities have the discretion to extend this period to up to 13 weeks. Around half of the 'user' authorities had used their discretion to extend the four week period for claimants to reply, while just under a third had given claimants the statutory minimum of four weeks. However, around one in five authorities appeared to be operating outside the statutory limitations, most by asking claimants to respond in less than four weeks, but a few by allowing them longer than the maximum 13 weeks. Most authorities reported that the majority of claimants responded within the time limits imposed by them.

The principal reasons why local authorities were applying the new regulations were:

- a suspicion that the claimant was not resident in the rented property
- an allegation that the claimant was working
- inconsistent information had been provided by the claimant
- a suspicion that the claimant and partner were living together as husband and wife

- a suspicion that the claimant was in collusive tenancy
- a record of previous Housing Benefit fraud by the claimant.

The predominant reason put forward by Housing Benefit managers for not suspending payments to claimants using the new power was that no relevant case had arisen in their authority. Other reasons included:

- authority uses other existing powers to combat claimant fraud
- authority lacks resources to carry out necessary investigations
- authority is in the process of developing necessary policies or procedures.

It is to be expected that the new power will be of use in some cases of suspected fraud rather than all, since it was introduced as an *addition* to the existing range of responses available to local authorities in order to avoid paying benefit when a claimant might not be entitled.

## **6. Views about the new power to suspend benefit**

A majority of Housing Benefit managers expressed positive views about the impact of the new power with little difference between the authorities who had used it and those who had not. The number of authorities expressing at least one positive comment on the new power was 63 (70 per cent) of the authorities who had used it, and 134 (62 per cent) of those who had not.

Four out of five authorities, regardless of whether they had had any experience of using it in the past, reported that they expected to use the power in the future. Ten per cent (28 authorities) said that they would not be using the power (or using it more). Some Housing Benefit managers who did not think the power to suspend payments will have a major impact on tackling or deterring fraud still reported that they will make use of the powers in the future.

## **7. Using the new anti-fraud discretionary powers - Summary and discussion**

Considerable caution must be exercised in interpreting the survey findings on the use of the new powers available to local authorities to combat landlord and claimant fraud. The seemingly low level of use can be partly explained by a number of contributory factors, the most important of which are as follows:

- The timing of the survey, i.e. six months after the new powers were introduced. It is undoubtedly the case that had the survey taken place 12 or 24 months after the November 1997 implementation date, more 'user' authorities would have been identified.
- The range of other powers that local authorities can use to respond to suspected fraud. It cannot be concluded at this stage that a local authority which has made little or no use of the new powers is neglecting its responsibilities in addressing Housing Benefit fraud. Other measures might be more appropriate in particular cases. In addition there may be structural pressures, through the incentive arrangements based on weekly benefit savings, to deal with suspected fraud cases in ways which lead to a quick termination of a claim.

- The diversity of local authorities in the speed and commitment of their response to the new powers. Some authorities have clearly been, on the evidence of the survey and visits, quicker to identify how the powers can be used.

The survey findings give a strong indication that the new powers will be used by an increasing number of authorities in the future and are generally viewed as a positive contribution to the range of responses that local authorities can make to cases of suspected fraud. The Benefit Fraud Inspectorate can be expected to play a role in the future to ensure that the new powers are used appropriately and effectively.

## 1. INTRODUCTION

In January 1998 the Department of Social Security commissioned the Social Policy Research Unit to carry out research into local authorities' use of new discretionary powers designed to increase their capacity to combat Housing Benefit fraud. The fieldwork for the project comprised site visits to 18 authorities in Great Britain and a telephone survey of Housing Benefit managers and was carried out in February to June 1998.

### **Policy background**

The Social Security Administration (Fraud) Act 1997 gave authorities new powers to combat Housing Benefit fraud by landlords and by claimants. In addition, new powers to stop or refuse to make direct payments to landlords, and to suspend benefit payments to claimants where there are doubts about entitlement, came into force on 3 November 1997. A DSS Circular, A48/97, gives guidance to local authorities on their use.

Local authorities already had a wide range of powers prior to the 1997 Act in existing regulations but the experience of local authorities had shown that there were a number of ways in which the risk of fraud could be reduced. Paying Housing Benefit direct to landlords was recognised as one security risk which fraudulent landlords could exploit, particularly as part of organised frauds involving fictitious claims. Existing regulations gave local authorities no option but to pay Housing Benefit directly to landlords in specified circumstances even when fraud was suspected. The new powers are intended to reduce the risk of fraud by allowing local authorities to stop, or refuse to put into place, direct payments to landlords who are not considered 'fit and proper' persons to receive them.

Local authorities have always had the power to withhold benefit from claimants whom they have reason to think were not entitled, but the regulations concerning the review of benefits in payment restricted them in what further action they could take. The new powers to suspend benefit extend existing options for local authorities by allowing them to impose time limits within which claimants must supply any information requested by the authority to support their claim and thereafter review the claim in the customary way.

### **The 'fit and proper' regulations**

Prior to the introduction of the 'fit and proper' regulations, a local authority was obliged to make direct payments of Housing Benefit under certain conditions (for example, if the claimant had more than eight weeks of arrears of rent payable to the landlord, or if a part of the claimant's Income Support or Jobseekers Allowance was already being paid direct to the landlord). Local authorities also had discretionary powers to make direct payments at the request of the claimant. The rationale for the new powers to stop direct payments was to maintain the positive aspects of the scheme (for example, guaranteed rental payments to landlords, convenience for claimants) while reducing the security risk of paying Housing Benefit to fraudulent landlords (who could, for example, knowingly cash payments after a tenant had left the property).

The new powers require a local authority to apply the 'fit and proper' test when the probity of a landlord is in doubt in relation to new cases where a direct payment is mandatory, or could be made under discretionary powers, and existing cases where a direct payment is already being made. Under the test, a local authority has to be satisfied that a landlord is fit and proper to receive a direct payment. If the authority is *not* satisfied it can refuse to pay Housing Benefit direct to the landlord. Guidance on the 'fit and proper' test is contained in the DSS Circular HB/CTB A48/97 issued in October 1997.

The guidance on what constitutes 'not fit and proper' suggests that local authorities could take into account any of the following circumstances:

- the landlord has been engaged in fraudulent activity in the past (the activity must be related to Housing Benefit only, other fraudulent activity must not be taken into consideration)
- failure to report relevant changes in tenants' circumstances
- failure to repay recoverable overpayments.

In the circular, this list is described as 'not exhaustive' but advises local authorities that it must 'act reasonably' in what circumstances it considers when making decisions.

#### **The additional powers to suspend payments to claimants**

For some time local authorities have had the power to withhold payment of benefit under the Housing Benefit Regulations (General) 1987. The new regulations allow authorities to suspend benefit if, upon a reasonable investigation, there is doubt about the claimant's entitlement and, as an additional power, to link the suspension with a requirement on the claimant to provide information to the local authority which can be used to re-establish entitlement. If the claimant does not provide the information within a specified time (a minimum of four weeks but possibly up to 13 weeks at the authority's discretion) the claim can be reviewed in the normal way (which may lead to a termination of the claim).

To an extent, the new regulations standardize the practices of some authorities who routinely terminated claims if claimants failed to respond to correspondence or were not at home when an officer made a visit on the grounds that residence had not been established (as reported in Sainsbury *et al.*, 1998). However, the new regulations also place responsibility on local authorities to undertake reasonable investigations before benefits are suspended.

Guidance on the new regulations is contained in the DSS Circular HB/CTB A48/97, issued in October 1997. Two examples are given of when the powers might be used. The first example is when an anonymous letter alleges a claimant has left a property; the second is when a house of multiple occupancy is the source of more claims than the capacity of the property.

### **Aims of the research**

The main aim of the research was to explore how the new powers were being used by local authorities in the first six months after they came into force and to monitor their early impact. Part of the rationale for the study was the perception of the DSS that the powers were not being extensively used and the need to explore the reasons for this.

The specific research questions on landlord fraud to be addressed were as follows:

- How many 'fit and proper' decisions have been taken since 3 November 1997, and what has been their outcome?
- How many landlords within each local authorities' catchment area are thought to be possibly fraudulent?
- Which grade of staff make decisions about 'fit and proper' landlords?
- What factors do local authorities take into account in making 'fit and proper' decisions?
- Have decisions to stop direct payments been challenged by landlords or claimants, and what has been the result?
- Are the new powers effective at preventing and deterring fraud?
- How do local authorities view their use of the new powers in the future?

The specific research questions on claimant fraud to be addressed were as follows:

- How frequently have the new powers been used?
- Why have some authorities not used the new powers?
- What factors do local authorities take into account in making decisions whether or not to suspend payments under the new regulations?
- Do claimants provide the required information within the time limits imposed on them?
- How do local authorities view their use of the new powers in the future?

### **Research design**

The main element of the research design was a telephone survey of all local authorities in England, Scotland and Wales. This was conducted on behalf of SPRU by Public Attitude Surveys Ltd. (PAS) of High Wycombe. The survey was preceded by a development stage comprising visits to 18 local authorities.

#### *Initial development stage*

The principal objective of the development stage of the project was to collect information on the main research issues in order to inform the development of a questionnaire for use in the telephone survey. The 18 local authorities were selected on the basis of the following criteria:

- size of Housing Benefit workload (using benefit expenditure as an indicator)
- type of authority
- geographical area.

**Table 1.1: Sample of local authorities for the development stage**

	<i>Number</i>
English District and Unitary authorities	8
English Metropolitan authorities	3
London authorities	3
Welsh authorities	2
Scottish authorities	2
<b>Total</b>	<b>18</b>

In each authority we conducted interviews with a Housing Benefit Manager and one or more officers with responsibility for investigating suspected fraud. Fieldwork visits took place in late February and early March 1998.

*The telephone survey*

A pilot of the telephone interviews was conducted with six local authorities. A copy of the final questionnaire can be found in Appendix A. Housing Benefit Managers in the 412 local authorities in Great Britain were sent introductory letters from DSS and SPRU (reproduced as Appendix B), a background document explaining the research and a copy of the questionnaire<sup>1</sup>. PAS conducted successful interviews with 305 authorities in April and May, a response rate of 75 per cent. Table 1.2 shows the response rate for each local authority type.

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<sup>1</sup> During the fieldwork information was also collected on local authorities' use of discretionary powers allowing them to make exceptional hardship payments to Housing Benefit recipients. The results of this research appear in the DSS Research Report series.



**Table 1.2: The achieved sample by local authority type**

	<i>Possible</i>	<i>Achieved</i>	<i>Response rate (%)</i>
English District and Unitary authorities	289	221	76
English Metropolitan authorities	36	27	75
London authorities	33	19	58
Welsh authorities	22	15	68
Scottish authorities	32	23	72
<b>Total</b>	<b>412</b>	<b>305</b>	<b>75</b>

The table shows that London authorities (i.e. the 32 London Boroughs and the City of London) are under-represented in the achieved sample. Since these authorities are generally larger than most other authorities, their under-representation affects the overall representativeness of the achieved sample. From data supplied by DSS, we compared the non-response authorities with the total population of authorities by the size of their privately rented sector (using rent allowance expenditure as an indicator). Table 1.3 presents the results of the comparison.

**Table 1.3: Analysis of non-response**

<i>Percentage of authorities in each quartile of the rent allowance distribution</i>	<i>Non-response authorities</i>	<i>All local authorities</i>
<b>1<sup>st</sup> quartile</b>	<b>29.0</b>	<b>25.5</b>
<b>2<sup>nd</sup> quartile</b>	<b>24.7</b>	<b>25.3</b>
<b>3<sup>rd</sup> quartile</b>	<b>19.4</b>	<b>24.2</b>
<b>4<sup>th</sup> quartile</b>	<b>26.9</b>	<b>25.0</b>
<b>Base</b>	<b>94</b>	<b>380</b>

Source: Department of Social Security.

The table shows that, as suggested above, we have lost from our achieved sample more of the larger authorities than expected. We have also lost more of the smaller authorities (by size of private sector). From previous research work with local authorities this outcome is not surprising. Many small authorities appear to be reluctant to engage with research projects, sometimes because their resources are small, but also because they do not see the relevance of the research to their authority. However, the two most common reasons cited by Housing Benefit managers from non-participating authorities were inability to meet the tight deadlines for the project, and the amount of work that would have been needed to gather the information we required.

### **A note on the timing of the survey**

The interviews for the study mostly took place in May 1998. Hence, local authorities had been able to use their new powers for, on average, around six months prior to interview. As will be shown later, many authorities had not stopped any direct payments and/or suspended payments in this period but expected to at some time in the future. Some authorities explained that they needed to set up appropriate systems before they could implement the new provisions. It is important to recognise, therefore, that the picture that will emerge from the analysis of the survey data represents a particular snapshot of activity in what is a period of considerable development and change.

### **Structure of the report**

Chapter 2 presents the findings from the survey about the use of the new powers to stop direct payments to landlords. The factors taken into account by local authorities when they make decisions based on the 'not fit and proper' regulations are analysed, and landlords' reactions to having direct payments stopped are explored. A preliminary examination of the number and outcome of appeals against adverse decisions is also presented. Chapter 3 comprises a complementary analysis of the reasons why local authorities have not used the new powers. The size of the 'problem' of fraudulent landlords is explored using survey data, and Housing Benefit managers' views on how the 'fit and proper' regulations might be used in future are analysed. Chapter 4 examines Housing Benefit managers' views on the utility and impact of the new powers to stop direct payments.

Chapter 5 presents an analysis of the use of new powers to withhold benefit payments from claimants. The factors taken into account by local authorities when they make decisions to suspend benefit payments, and the use made of the time limits that authorities can impose on claimants to respond to demands for information are looked at. A preliminary examination of the number and outcome of appeals against adverse decisions is presented. The chapter also contains an analysis of why local authorities have not used the new powers. Chapter 6 explores Housing Benefit managers' views on the utility and impact of the new powers to suspend benefit payments. Chapter 7 comprises a summary of the findings of the research on the use of the new counter-fraud powers and a discussion of their implications for policy.

## 2. LOCAL AUTHORITIES' USE OF THE NEW POWERS TO STOP DIRECT PAYMENTS TO LANDLORDS

### Introduction

Of the 305 local authorities in the survey, 49 (16 per cent) had used the new powers to stop direct payments to landlords since their introduction in November 1997. In Table 2.1, the authorities that had used the new powers are analysed by local authority type.

**Table 2.1: Local authorities which had used the new powers to stop direct payments, by local authority type**

	<i>Authorities which had used new powers to stop direct payments</i>		<i>Base (number of authorities)</i>
	Number	%	
English District authorities	33	15	221
English Metropolitan authorities	7	26	27
London authorities	5	26	19
Welsh authorities	2	13	15
Scottish authorities	2	9	23
<b>All authorities</b>	<b>49</b>	<b>16</b>	<b>305</b>

The table shows that in the first six months of their operation, the new powers to stop direct payments were used by only one in six of local authorities. The London and Metropolitan authorities were quicker to start using the new powers but still only around one in four of these authorities had stopped any direct payments.

### Numbers of landlords and claimants affected by use of new powers

From what is currently known about landlord fraud, the problem is connected more with landlords who have more than one property or own houses of multiple occupancy, than with landlords with a single tenant. Any decision to stop a direct payment, therefore, may often affect a number of claimants. In the survey, therefore, Housing Benefit managers were asked how many landlords had had payments stopped and how many claimants had been affected. This type of information is not routinely collected by local authorities, and in all but two authorities Housing Benefit managers were able to give the exact number of landlords affected and some estimate of the number of claimants involved. The responses are presented in Tables 2.2 and 2.3.

**Table 2.2: Number of landlords whose direct payments had been stopped since November 1997 using the new powers**

<i>Number of landlords</i>	<i>Number of authorities</i>
1	30
2	11
3	2
4	1
5	1
8	1
12	1
<b>Total</b>	<b>47</b>

**Table 2.3: Number of claimants affected by decision to stop direct payments to their landlords**

<i>Number of claimants affected</i>	<i>Number of authorities</i>
1	8
2-5	12
6-20	20
21+	7
<b>Total</b>	<b>47</b>

Tables 2.2 and 2.3 show that while few landlords (87 in total) had their direct payments stopped, far more claimants (630) were affected. Most authorities (30) had only dealt with a single landlord under the new powers, but in 22 of these cases more than one claimant was involved. There is some indication therefore that, in the first six months, local authorities were more likely to have applied the new powers to landlords with multiple tenants. Table 2.4 shows the number of tenants affected in the authorities who had stopped payments to a single landlord.

**Table 2.4: Number of claimants affected by decision to stop direct payments to their landlords (authorities using their powers on one landlord only)**

<i>Number of claimants affected</i>	<i>Number of authorities</i>
1	8
2-5	10
6-20	9
21+	3
<b>Total</b>	<b>30</b>

Table 2.4 supports the observation that while some authorities have used the powers on landlords with only a single tenant, most had targeted landlords with large numbers of tenants. One authority had stopped direct payments to a landlord with 60 tenants.

**Reasons why local authorities have stopped direct payments**

As mentioned in Chapter 1, local authorities can apply the ‘fit and proper’ test when considering whether to make or continue to make direct payments to landlords where there is some doubt about their probity. The DSS guidance circular gives examples of three types of circumstance which could be taken into account (previous fraudulent activity, failure to report changes in circumstances, and failure to repay overpayments). Local authorities are able to consider other factors but they must relate to the landlord’s probity in dealing with Housing Benefit.

In the survey, we were able to explore factors that had been considered in making decisions to stop paying benefit to landlords. Housing Benefit managers were asked to identify the factors they had considered from a list that was compiled using the information gathered from the managers interviewed in the development stage of the project. Table 2.5 presents an analysis of the survey responses.

**Table 2.5: Factors taken into account in ‘fit and proper’ decisions (base = 49 authorities)**

<i>Factor</i>	<i>Factor taken into account? Number (and percentage) of authorities</i>					
	Yes		No		Don't know	
	No.	(%)	No.	(%)	No.	(%)
<i>(a) Mentioned in DSS guidance</i>						
Previous Housing Benefit fraud by landlord	35	(71)	12	(24)	2	(5)
Failure to report changes in circumstances	33	(67)	18	(37)	1	(2)
Failure to repay overpayments	40	(82)	8	(16)	1	(2)
<i>(b) Other factors</i>						
Landlord has other debts owing to authority	14	(29)	33	(67)	2	(4)
Landlord's properties are poorly maintained	13	(27)	34	(69)	2	(4)
Landlord has been threatening or abusive to local authority staff	9	(18)	39	(80)	1	(2)
Landlord has a criminal record	5	(10)	39	(80)	5	(10)

It appears from the table that local authorities mostly took into account those factors mentioned in the DSS guidance. Other factors have been taken into account but these were, as far as the data show, in conjunction with one or more of the three principal factors. It seems, therefore, that local authorities tend to build a composite picture of landlords who are not ‘fit and proper’ persons to receive direct payments from a number of sources. In the six authorities where only one landlord had been affected by the new powers and the local authority has cited only one reason, four mentioned failure to repay overpayments (the factor most mentioned by local authorities in Table 2.5), and two mentioned previous fraudulent activity.

The findings from the survey confirm the views emerging from Housing Benefit managers in the development stage. Previous fraud by a landlord is a clear indication that he or she is not a ‘fit and proper’ person. Failure to report changes in circumstances creates suspicions of a lack of probity but it is possible that landlords genuinely are not aware of relevant changes in the circumstances of their tenants. Hence there was less certainty about whether there was a deliberate intent to mislead the authority. Failures to repay overpayments were taken as clearer indications of lack of probity because it is within a landlord’s control when and if they pay back money owing to the authority. Hence, local authorities were more reluctant to make direct payments of Housing Benefit if they felt there was a risk that any possible overpayment in the future would not be repaid. (It was mentioned by some Housing Benefit managers interviewed that new powers under the Social Security Administration (Fraud) Act 1997 to recover overpayments from the benefit paid on behalf of other claimants are expected to reduce the problem of recovery in the future and in consequence may reduce their use of the power to stop direct payments.)

The DSS guidance emphasises that matters unconnected with Housing Benefit should not be a factor in assessing a landlord's probity and states clearly that authorities expose themselves to legal challenge if they do. The responses set out in Table 2.5 suggest that some local authorities may be straying into uncertain territory if they take into account factors such as a landlord's non-Housing Benefit debts, criminal record, the state of their accommodation, and their treatment of local authority staff.

### **Responsibility for making 'fit and proper' decisions**

In the survey, all Housing Benefit managers were asked which grade of staff was responsible for making the decision whether or not to stop a direct payment to a landlord. Table 2.6 compares the responses from authorities where the new power had been used with those where it had not.

**Table 2.6: Analysis of who makes or will make 'fit and proper' decisions**

<i>Grade of staff</i>	<i>Local authorities who HAVE used new powers</i>		<i>Local authorities who HAVE NOT used new powers</i>	
	<i>No.</i>	<i>(%)</i>	<i>No.</i>	<i>(%)</i>
Housing Benefit assessment officers	3	(6)	13	(5)
Supervisory staff/team leaders	14	(29)	88	(35)
Managerial staff	30	(61)	129	(51)
Fraud or investigation staff	2	(4)	23	(9)
<b>Base (number of authorities)</b>	<b>49</b>		<b>253</b>	

As we have seen, relatively few authorities have used the new power to stop direct payments. It is perhaps too early to say therefore which grade of staff is the most appropriate to make 'fit and proper' decisions. Very few authorities have allocated, or intend to allocate, the task to assessment staff. Most appear to view the task as a supervisory or managerial responsibility.

### **Local authorities' response when both landlord and claimant are considered unsuitable to receive payment of Housing Benefit**

Apart from the statutory circumstances in which a local authority must make a payment direct to a landlord, there is a discretionary power to make a direct payment when it is deemed in the interests of the claimant. This might arise when, for example, a claimant is considered irresponsible by the authority or is unable for some reason to manage their resources. In such a situation the local authority could find itself in a dilemma if it wishes to stop direct payments to the landlord if his or her probity is in doubt. A similar dilemma might also arise if both a landlord and their claimant are in some way suspected of possible fraudulent behaviour (for example, where there is evidence of a collusive tenancy). In order to explore how local authorities react to such situations, Housing Benefit managers (in authorities where the new power had been used) were asked to state what action they would generally take where both the claimant and landlord were considered unsuitable to receive payment.

No Housing Benefit managers said that they would continue to pay the landlord and only one said they would pay the claimant instead. Most (29 of the 49 respondents) did not commit themselves to specifying a 'general' response but said that their action would depend on the circumstances of the particular case. The most common response (from 18 managers) was to withhold payment altogether pending further investigation of the case. Managers interviewed in the development stage gave similar responses. It was not unusual for them to be faced with cases of suspected fraud where both landlord and claimant were implicated. The new powers, in such cases, were largely irrelevant because a more proactive, investigative response was appropriate.

### Landlords' reactions to the new powers

Clearly it would be undesirable, if not unavoidable, if claimants suffered in some way as a result of a local authority stopping direct payments to a landlord. In order to explore this possibility, Housing Benefit managers were asked in the survey if they were aware of any landlords reacting adversely to the authority exercising its new powers; 23 managers gave examples, some of whom cited more than one. Table 2.7 presents an analysis of the responses.

**Table 2.7: Reaction of landlords to authorities exercising new powers to stop direct payments (base = 49 authorities)**

Type of reaction by landlords	Reaction experienced by local authority?					
	Number (and %) of authorities					
	Yes		No		Don't know	
	No.	(%)	No.	(%)	No.	(%)
Landlord has refused to take benefit claimants	9	(18)	37	(76)	3	(6)
Landlord has evicted claimant(s)	6	(12)	40	(82)	3	(6)
Landlord has been abusive or threatening to benefit staff	15	(31)	33	(67)	1	(2)
Landlord has been abusive or threatening to claimants	15	(31)	29	(59)	5	(10)
Landlord has taken legal action against authority	5	(10)	44	(90)	0	(0)

Table 2.7 confirms that some landlords react in ways that are undesirable for claimants (some, and possibly most, of whom will be *bona fide* claimants) or for the local authority and its staff. Ten authorities reported instances of landlords evicting tenants or refusing to take benefit recipients. Such reactions do not help either the individual tenants concerned nor people on benefit more widely if the stock of available rented accommodation is effectively reduced. However, if the small percentage of landlords concerned cease to receive social security payments as a result, then some purpose will have been served by removing a source of potential Housing Benefit fraud.



The five authorities in which legal action had been taken by a landlord were either London Boroughs or Metropolitan authorities. The outcomes of such action are not yet known.

### **Appeals against decisions to stop direct payments**

Landlords are able to challenge a decision to stop making direct payments to them. In the six months since the new powers came into force, a total of 23 appeals were raised in 14 of the authorities that had used the new powers. Nine of the appeals were in London Boroughs. Twenty-three appeals represents an appeal rate of around 25 per cent. Four appeals, two of which were in the same authority, were reported to have been successful.

### **Discussion**

The evidence from the survey indicates that, perhaps surprisingly, relatively few authorities have taken advantage of their new powers to stop direct payments to landlords. Where the powers have been used, the influence of the DSS guidance is apparent in that most decisions appear to be based on at least one of the three criteria mentioned in the guidance. There is some evidence that in a number of authorities some factors are being taken into account that may possibly be outside the scope of the regulations. Further guidance might therefore include examples of where authorities should take particular care in future.

DSS might also consider whether to issue guidance on the most appropriate level of staff to make 'fit and proper' decisions, given the possible implications - for landlords, claimants and local authorities, and the relationships between the three parties - of decisions to stop direct payments.

### 3. CHARACTERISTICS OF LOCAL AUTHORITIES WHICH HAD NOT USED THE NEW POWERS TO STOP DIRECT PAYMENTS

#### Introduction

Part of the rationale for conducting this element of the research project was the apparent paradox that while local authorities had pressed for new powers in combatting fraud, including the power to stop direct payments, there was also anecdotal evidence that their use, so far, was very limited.

Of the 305 local authorities in the study, 49 (16 per cent) reported that the power to stop or withhold direct payments had been used by the time the survey was carried out. Table 3.1 presents an analysis of the 256 authorities which had not used the new powers by local authority type.

**Table 3.1: Local authorities which had not used the new powers to stop direct payments, by local authority type**

	<i>Authorities which had NOT used new powers to stop direct payments</i>		<i>Base (number of authorities)</i>
	Number	%	
English District authorities	188	85	221
English Metropolitan authorities	20	74	27
London authorities	14	74	19
Welsh authorities	13	87	15
Scottish authorities	21	91	23
<b>All authorities</b>	<b>256</b>	<b>84</b>	<b>305</b>

In the survey we asked Housing Benefit managers in these authorities to explain in their own words, why they had not taken advantage of the new powers. Managers were also asked what factors they would take into account in deciding whether a landlord was 'fit and proper' if the need arose. This chapter presents the findings in relation to both questions.

#### **Local authorities' explanations of why the new powers had not been used**

Table 3.2 presents an analysis of the reasons put forward by Housing Benefit managers for why they had not used their new powers to stop direct payments to landlords. Respondents were allowed to cite as many reasons as they wanted.

**Table 3.2: Principal reasons for not using new powers to stop direct payments**

<i>Reason</i>	<i>Percentage of authorities mentioning this reason</i>
New powers not yet required/no appropriate cases	64
Authority is in the process of developing necessary policies or procedures	14
Difficulty in finding sufficient evidence to justify stopping direct payments	9
Authority uses other existing powers to combat landlord fraud	9
Authority lacks resources to carry out necessary investigations	4
Authority is currently taking legal action in relevant case(s)	4
<b>Base number of authorities</b>	<b>256</b>

A number of other reasons were given but were mentioned by five or fewer authorities:

- Authority has current policy to pay claimants rather than landlords
- Lack of a suitable computer system to support implementation
- Local authority is currently going through re-organisation
- Concerns about consequences of labelling a landlord 'not fit and proper'
- View that new powers are not 'new' but reinforce existing powers.

There are a number of observations that can be made about Housing Benefit managers' explanations for not using the new powers.

We have already mentioned, in Chapter 1, that the timing of the survey has very likely had a considerable influence on the results. The fact that an authority had not stopped any direct payments in the first six months since the powers were introduced does not imply that it views them as being of marginal use. As the responses in Table 3.2 show, there were a number of reasons which suggest that use *would* be made in the (possibly near) future - for example, where an authority is currently developing policies and procedures, or is dealing with a reorganisation. Some other authorities were dealing with problem landlords in other ways.

What is more puzzling, at first sight, is the number of authorities which reported that they had had no use for the new powers up to the time of the interview. The timing of the survey may help to explain this apparent anomalous response. Local authorities must apply the 'fit and proper' test to claims where the landlord's probity is in question. New claims in relation to properties from such landlords should have prompted authorities to invoke the test. However, there may have been few or no such claims between November 1997 and the research interview. Although local authorities can use the new powers at any time in the life of a claim, the renewal stage of a claim should also prompt authorities to consider stopping existing direct payments to possibly unsuitable landlords. However, the time for which a Housing Benefit award is made is for the local authority to decide. Most claimants will not

be required to make a renewal claim for at least six months after the last award. It may be therefore that many of the cases to which the 'fit and proper' test might be applied were not due for reconsideration in the six months since November 1997.

Some of the reasons for not using the new powers are more closely linked to the nature of the powers themselves rather than the timing of the survey. Examples include Housing Benefit managers' concerns that labelling landlords 'not fit and proper' would create problems for them, difficulties in finding sufficient evidence, and the comment that insufficient resources were available to investigate appropriate cases. These reasons were not mentioned by many authorities but may be amenable to some form of policy response. The observation that the label 'not fit and proper' may be perceived as pejorative or, worse, defamatory was also made by some managers interviewed in the development stage of the project.

The point was also made by a number of managers in the development stage that it was perhaps misleading to consider their use of the new powers in isolation from the other means at their disposal for responding to actual and suspected landlord fraud. In some cases, other action, such as stopping the claim altogether rather than just stopping direct payments, was more appropriate. It was often the case that where a landlord was involved in a fraud there was also a suspected claimant as well. Some viewed the new powers as useful in a limited range of circumstances rather than in every suspicious case. Stopping direct payments was one way of preventing overpayments to landlords who were known to be unreliable in repaying Housing Benefit debts to the authority or unreliable in reporting changes in claimants' circumstances (particularly when a tenancy has ended). However, even in these circumstances some authorities expressed the view that some of the other new powers contained in the Social Security Administration (Fraud) Act, for example to recover overpayments from awards to other tenants, would probably prove more useful in reducing and deterring fraud.

### **Potential need for new powers**

Notwithstanding the discussion in the previous section, the level of use of the new powers does appear unexpectedly low compared with the apparent size of the problem of fraudulent landlords. Tables 3.3 to 3.5 attempt to put the number of landlords suspected of being fraudulent into perspective. Table 3.3 presents data on the number of landlords receiving direct payments in each authority. Table 3.4 shows data on the number of landlords suspected of being fraudulent by the Housing Benefit managers interviewed, and Table 3.5 combines the information from 3.3 and 3.4 to show the proportion of suspected landlords. The intention of presenting the data in this way is to demonstrate that, in most local authorities, fraudulent landlords represent a relatively small section of the private rented sector.

**Table 3.3: Analysis of the number of landlords receiving direct payments (278 responses)**

<i>Number of landlords receiving direct payments</i>	<i>All authorities</i>	
	<i>No.</i>	<i>(%)</i>
1-250	86	(31)
251-500	67	(24)
501-1000	63	(23)
over 1000	62	(22)
<b>Base</b>	<b>278</b>	

Table 3.3 shows clearly that most authorities are paying Housing Benefit directly to hundreds or, in many cases, thousands of landlords. These large numbers contrast with the relatively small number of landlords suspected of being fraudulent by local authorities, as the right-hand column of Table 3.4 shows.

**Table 3.4: Analysis of the number of landlords suspected of being fraudulent**

<i>Number of landlords receiving direct payments suspected of being fraudulent</i>	<i>Local authorities who HAVE used new powers</i>	<i>Local authorities who HAVE NOT used new powers</i>	<i>All authorities</i>	
	<i>(row %)</i>	<i>(row %)</i>	<i>(column % in brackets)</i>	<i>No. (%)</i>
Zero	13	87	90	(36)
1-10	15	85	102	(40)
11-20	12	88	25	(10)
over 20	26	74	19	(8)
<b>Number of authorities</b>	<b>39</b>	<b>213</b>	<b>252</b>	

Table 3.4 shows that over three-quarters of local authorities reported that they had ten or fewer fraudulent landlords in their areas. Over a third of authorities reported that none of their landlords were fraudulent. The finding that some authorities (12) who reported no fraudulent landlords also reported that they had used the new powers is at first sight contradictory but can possibly be explained by the timing of the survey. At the time of the interview it is feasible that a local authority had current dealings with no fraudulent landlords but had done at some point in the previous six months. The evidence cited in Chapter 2 that some landlords have stopped taking benefit recipients as tenants or had evicted tenants supports this possibility. The table also shows that among those local authorities with the highest number of fraudulent landlords, use of the new powers was greater than in the other authorities. Among the local authorities in the 'over 20' category, were 19 authorities reporting over 40 fraudulent landlords.

In order to explore further the size of the landlord problem, the *prevalence* of fraudulent landlords was calculated where data were available. Table 3.5 presents the results.

**Table 3.5: Analysis of the prevalence of fraudulent landlords**

<i>Prevalence of fraudulent landlords (number PER HUNDRED LANDLORDS )</i>	<i>All authorities (column %)</i>
Zero	36
1 or fewer	18
more than 1-2	14
more than 2-5	15
more than 5-10	9
more than 10	7
<b>Base</b>	<b>236</b>

Tables 3.4 and 3.5 suggest that most local authorities do not appear to be faced with a major problem of landlord fraud. Five out of six authorities were found to have five per cent or lower of their landlords suspected of being fraudulent. At the other end of the spectrum a small number of authorities (about seven per cent of the sample) appeared to have a more serious problem of landlord fraud with over ten per cent suspected.

What remains surprising following the analysis of the potential need for the new powers is the number of authorities who appear to have a (relatively) serious problem of fraudulent landlords and yet who have not availed themselves of an additional means of tackling the problem.

**How ‘non-user’ authorities expected to implement the new powers**

In the survey, Housing Benefit managers were asked about the factors that they would be taking into account in future when having to make a ‘fit and proper’ decision about a landlord. Table 3.6 presents their responses.

**Table 3.6: Factors that local authorities take into account in ‘fit and proper’ decisions (base = 256 authorities)**

<i>Factor</i>	<i>Factor taken into account? Number (and %) of authorities</i>					
	Yes		No		Don't know	
	No.	(%)	No.	(%)	No.	(%)
<i>(a) Mentioned in DSS guidance</i>						
Previous Housing Benefit fraud by landlord	242	(95)	12	(5)	2	(1)
Failure to report changes in circumstances	225	(88)	28	(11)	3	(1)
Failure to repay overpayments	209	(82)	43	(17)	4	(2)
<i>(b) Other factors</i>						
Landlord has other debts owing to authority	64	(25)	180	(70)	12	(5)
Landlord's properties are poorly maintained	48	(19)	191	(75)	17	(7)
Landlord has been threatening or abusive to local authority staff	95	(37)	141	(55)	20	(8)
Landlord has a criminal record	81	(32)	141	(55)	34	(13)

It is interesting to compare this table with Table 2.5 which shows an analysis of the factors actually taken into account by authorities that had stopped direct payments to landlords. In general, the responses from managers in the ‘non-user’ authorities reflect closely the DSS guidance, most managers reporting that they would consider the factors mentioned in the guidance circular. The two factors which attracted the lowest scores in Table 3.6 (‘landlord has debts to the authority’ and ‘properties poorly maintained’) are possibly those least connected to a landlord’s probity in connection with Housing Benefit matters. Again, the responses might be viewed as a reflection of the guidance. In authorities where direct payments had been stopped, these two factors had been taken into account in over a quarter of authorities, suggesting that when the need to consider actual cases eventually arises, these factors might be more relevant than the current ‘non-users’ expect.

### **Discussion**

The predominant reason put forward by Housing Benefit managers for not stopping direct payments to landlords was that no relevant case had arisen in their authority. This seems surprising given the numbers of landlords who receive direct payments and the numbers who are considered possibly fraudulent. However, as the next chapter will show, Housing Benefit managers are generally supportive of the new powers and see themselves using them in the future.

One contributory explanation of these apparently inconsistent findings is that some local authority Housing Benefit departments may not yet have recognised the potential use of the new powers. The picture that emerged from the visits to authorities in the development stage of the project was that those with large caseloads to service and maintain are likely to resort to familiar and trusted responses to cases of suspected fraud. For example, suspicious cases

are routinely passed quickly to fraud officers for possible investigation. We know from the survey that fraud officers are not widely used to make 'fit and proper' decisions. The opportunity for considering using the new powers may therefore be missed.

The development stage of the project also revealed another reason why, at the time of interview, some local authorities had not used the new powers to stop direct payments to landlords. Housing Benefit managers offered a range of explanations for not having used the powers all of which were related to the constraints of time. In all the authorities visited, managers explained that implementing any new power required time to consider the management and administrative implications, including resourcing, training and monitoring performance. Part of the problem reported by some managers was that the relevant DSS guidance circular issued in October 1997 had not been received until January 1998. Others said that implementation had been slowed down by the demands of working towards the end of the financial year, or by staff shortages, or by ongoing changes to administrative or computer systems. It is therefore probably unwise at this stage to infer anything about the long term use or effectiveness about the new powers from their apparently low level of use in the first six months since their introduction.

It may also be possible that the option now available to local authorities to recover overpayments from other direct payments made to landlords is proving more popular and attractive than the power to stop direct payments, and that the level of use of the latter will not match initial expectations.



#### 4. VIEWS ABOUT THE NEW POWERS TO STOP DIRECT PAYMENTS

##### **Introduction**

The power to stop direct payments to landlords was introduced partly in response to requests from local authorities. Direct payments are clearly useful (as shown in the previous chapter by the number of landlords who receive them) but they are also a security risk when made to possibly fraudulent or unreliable landlords. The new powers lessen that risk.

In designing the research project, it was expected that relatively few authorities would have used the new powers by the time of interview. Actual use could, therefore, not be interpreted as an indication of future use or of authorities' general reaction to them. Hence, in the survey, Housing Benefit managers were asked whether or not they agreed with a series of statements about the utility and impact of the new powers. This chapter presents an analysis of their responses.

##### **Views about the impact of the new powers**

The new powers have the potential for contributing to the reduction of fraud in different ways. Stopping direct payments could put an end to an existing fraud and refusing a direct payment on a new claim could prevent a fraud. There could also be a deterrent effect. If landlords are aware of the new powers or have been subject to them they might not attempt similar frauds in future.

In the survey, managers were asked to agree or disagree with the following statements about the new powers:

- The new powers are, or will be, a major contribution to tackling landlord fraud
- The new powers have had, or will have, little effect on tackling fraud
- We expect to make increasing use of the new powers in the future
- The new powers have, or will have, an important deterrent effect on landlords

Table 4.1 presents their responses.

**Table 4.1: Housing Benefit managers' views about the new powers to stop direct payments**

<i>Views about impact</i>	<i>Response of local authorities</i>					
	<i>Authorities who HAD used new powers (%)</i>			<i>Authorities who HAD NOT used new powers (%)</i>		
	Agree	Disagree	Don't know	Agree	Disagree	Don't know
New powers are/will be a major contribution to tackling landlord fraud	61	24	14	56	24	20
New powers will have little effect on tackling fraud	29	55	16	24	64	12
Local authority expects to make use/increasing use of new powers in the future	59	18	22	60	24	16
New powers have/will have an important deterrent on landlords	82	10	8	81	11	9
<b>Base (number of authorities)</b>	<b>49</b>			<b>256</b>		

Table 4.1 shows a majority of local authorities expressing positive views about the impact of the new powers with little difference between the authorities who had used them and those who had not. Around a quarter of authorities expressed negative views. The number of authorities expressing at least one positive comment on the new powers (from the two positive statements in Table 4.1) was 35 (71 per cent) of the authorities who had used them, and 190 (74 per cent) of those who had not.

Four out of five authorities reported that they expected to use the powers in the future regardless of whether they had had any experience of using them in the past. Of the local authorities which had not used the new power, 27 said that they would not be using them (or using them more) in the future. Of these, 13 reported that they had no problem landlords in their areas.

### **Discussion**

The survey findings show a generally high level of support for the new powers, despite the fact that little use had been made of them so far. Housing Benefit managers from authorities where there were no problem landlords in the area would perhaps be expected to say that they saw no use for the powers in the future. It is more surprising to find some authorities where direct payments had been stopped (9 authorities) saying that they would not be making increasing use in future (although in three of these the number of fraudulent landlords was reported to be zero, so it is possible that in these authorities the problem of fraudulent landlords might have been dealt with). There was no consistent pattern among these authorities which might help explain this view.

Around six out of ten authorities said that the new powers would have an important deterrent effect on landlords. This is encouraging since deterring fraud is one of the main elements of

current counter-fraud strategies (see, for example, the welfare reform Green Paper (DSS, 1998)). The evidence, cited in Chapter 2, that around three-quarters of landlords whose direct payments are stopped, do not appeal might suggest that landlords are unwilling to be exposed to accusations that they lack probity. There might be a case therefore for encouraging local authorities to publicise the powers, and possibly their use of them, to landlords receiving direct payments in order to increase the deterrent effect.

## 5. LOCAL AUTHORITIES' USE AND NON-USE OF THE NEW POWERS TO SUSPEND BENEFIT

### Introduction

As explained in Chapter 1, the new powers introduced in November 1997 added to existing powers to withhold benefit payments from claimants. Local authorities are able, therefore, to take action against possibly fraudulent claimants without necessarily using the new powers. In the survey, we were concerned to distinguish between three types of authorities: those which had used the new power to suspend benefit, those which had used existing powers to withhold payments but not the new ones, and those which had used neither. In this chapter, we explore the use of the new power by those authorities which had used it, and the reasons why the remaining two types of authorities had not.

### Local authorities' use of the powers to withhold or suspend payments

Of the 305 local authorities in the survey, 261 (86 per cent) had withheld or suspended payments to claimants, of whom 90 (30 per cent of the whole sample) had used the new power to suspend. Table 5.1 presents an analysis of these authorities by local authority type.

**Table 5.1: Use of existing and new powers to suspend payments, analysed by local authority type**

	<i>All authorities that have withheld or suspended payments</i>		<i>Authorities which have used the new power to suspend payments</i>		<i>Base (number of authorities)</i>
	Number	%	Number	%	
English District and Unitary authorities	191	86	67	30	221
English Metropolitan authorities	22	81	7	26	27
London authorities	17	89	7	37	19
Welsh authorities	14	93	3	20	15
Scottish authorities	17	74	6	26	23
<b>All authorities</b>	<b>261</b>	<b>86</b>	<b>90</b>	<b>30</b>	<b>305</b>

Table 5.1 shows that the practice of withholding or suspending payments to claimants is widespread. Nearly nine in ten authorities reported halting payments in the six months since November 1997. Rates of suspension were particularly high in London and among Welsh authorities. In contrast, only 90 of the 261 local authorities which had stopped a payment had made use of the new, additional power. Again, more London authorities had used it than other local authority types.

### Numbers of claimants whose benefit was suspended under the new power

In the survey, Housing Benefit managers were asked how many times they had used the new power to suspend payments. Valid responses were received from 78 authorities, as Table 5.2 shows.

**Table 5.2: Number of cases where local authorities had used the new power to suspend payments to claimants**

<i>Number of cases of suspended benefit</i>	<i>Number (and %) of authorities</i>
1-10	39 (50)
11-20	12 (15)
21-50	18 (23)
Over 50	9 (12)
<b>Total</b>	<b>78</b>

Table 5.2 shows that, of the authorities who had used the new power in the first six months since the regulations came into force, most used it in relatively few cases. Some authorities, however, were comparatively big users, seven reporting suspensions in over 100 cases (one London Borough, one Metropolitan authority, one Welsh authority, and four English district authorities). Of the seven, four were coastal authorities where claimant populations are generally more transient than other authorities.

### Local authorities' use of time limits

As explained in Chapter 1, local authorities must give claimants time to respond to a request for further information before benefit is suspended. Claimants must be given four weeks at least, but local authorities have the discretion to extend this period up to 13 weeks. In order to explore the extent to which local authorities were using their discretion to extend the minimum four week period, Housing Benefit managers were asked in the survey to state the maximum length of time they had given a claimant (or claimants) in their authority. Table 5.3 presents their responses.

**Table 5.3: Time given to claimants to respond to requests for information**

<i>Time given to claimants to respond</i>	<i>Number (and %) of authorities</i>
less than 4 weeks	13 (17)
4 weeks	24 (31)
5-13 weeks	38 (49)
over 13 weeks	3 (4)
<b>Total</b>	<b>78</b>

The table shows that around half of the authorities had used their discretion to extend the four week period for claimants to reply, while just under a third had given claimants the statutory minimum of four weeks. However, around one in five authorities appeared to be operating outside the statutory requirements, most by asking claimants to respond in less than four weeks, but a few by allowing them longer than the maximum 13 weeks. One authority reported that it had given a claimant (or claimants) six months to respond.

Housing Benefit managers were asked to give an estimate of the proportion of claimants who actually responded within the time limits set for them. Table 5.4 presents their responses.

**Table 5.4: How claimants respond to time limits**

<i>Proportion of claimants responding within set time limit</i>	<i>Number (and %) of authorities</i>
More than half	54 (69)
About half	10 (13)
Fewer than half	5 (6)
None	7 (9)
<b>Total</b>	<b>78</b>

Of the 54 authorities that reported that more than half the claimants responded within the time limits set, 46 (59 per cent of the 78 authorities responding) said that the large majority of claimants were able to comply.

The seven authorities reporting that no claimants had been able to respond within the time limits set comprised six English Districts and a Scottish authority all of which had suspended payments from very few claimants (between one and six). In two of these, however, the maximum time granted to claimants was less than the four week statutory minimum. The finding that seven authorities said that no claimants responded within the time limits requires explanation. The interviews with managers in the development stage of the project identified that some claimants fail to respond not only within a set time but fail to respond at all (raising the suspicion that there was at least something untoward about the claim and possibly fraud). In such cases the authority could, and often did, use its power to terminate the Housing Benefit claim, which could be viewed as an acceptable outcome in that it stops continuing payment in a case where entitlement was not established to the satisfaction of the authority.

#### **Reasons why local authorities have suspended payments under the new powers**

The new regulations give local authorities the power to suspend benefit when there is some doubt about a claimant's continuing entitlement to benefit. Two examples are given in the DSS guidance of when the powers might be used. The first example is when an anonymous letter alleges a claimant has left a property; the second is when a house of multiple occupancy is the source of more claims than the capacity of the property.

**APPENDIX A**

**QUESTIONNAIRE FOR TELEPHONE SURVEY**

**APPENDIX A - QUESTIONNAIRE FOR TELEPHONE SURVEY**

Section A of the questionnaire, comprising questions 1-23, covered local authorities, use of their discretionary powers in relation to exceptional hardship payments (see footnote 1 in Chapter1).

**SECTION B - 'FIT AND PROPER' LANDLORDS**

24	How many landlords do you make direct payments to at present?	[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE] ENTER EXACT NUMBER _____ OR ENTER ESTIMATE _____ (DK)
25	We are interested in your assessment of the number of fraudulent landlords in your authority in receipt of direct payments. How many of these landlords would you say you had?	[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE] ENTER EXACT NUMBER _____ OR ENTER ESTIMATE _____ (DK)
26	Since November 1997, have you used your new powers regarding 'fit and proper' landlords to refuse or stop making a direct payment?	[RESPONDENT MUST ANSWER YES OR NO] Yes [GO TO Q.27] No [GO TO Q.36]
<b>Questions 27-35: Use of new powers</b>		
27	How many landlords have had direct payments stopped as a result of the new powers?	[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE] ENTER EXACT NUMBER _____ OR ENTER ESTIMATE _____ (DK)



28	How many claimants has this affected?	[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE] ENTER EXACT NUMBER _____ OR ENTER ESTIMATE _____ (DK)
29	How many landlords have challenged or appealed against the decision to stop or refuse to make direct payments?	[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE] ENTER EXACT NUMBER _____ OR ENTER ESTIMATE _____ (DK)
30	And how many of these appeals or challenges were successful?	[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE] ENTER EXACT NUMBER _____ OR ENTER ESTIMATE _____ (DK)
31	What level of staff usually make decisions about stopping or refusing to make a direct payment to a landlord?	[READ OUT; CODE ONE RESPONSE ONLY] Housing Benefit assessment officers Team leaders, or other supervisory staff Housing Benefit Managerial staff Fraud or investigation staff (Other answer) [WRITE IN _____]

32	<p>We are interested in the criteria or circumstances you take into account in deciding that a landlord is not 'fit and proper' to receive direct payments. I will read out a number of examples which have been given to us. Can you say in each case whether, in your authority, you have used each of these criteria. And could you say whether they are common or not?</p>	<p>[READ OUT AND ENTER RESPONSE]  (KEY: Y/C = yes, a common reason  Y/N = yes, but not a common reason  N = no examples of this reason in this authority)</p> <p>Landlord's failure in the past to report changes in tenants' circumstances Y/C Y/N N DK  Landlord's record on repaying overpayments Y/C Y/N N DK  Landlord has other debts owing to the authority Y/C Y/N N DK  Housing Benefit fraud in the past Y/C Y/N N DK  Landlord's properties are poorly maintained Y/C Y/N N DK  Landlord has been threatening or abusive to Housing Benefit staff Y/C Y/N N DK  Landlord has a criminal record Y/C Y/N N DK</p>
33	<p>We are interested in local authorities' responses to the situation where the landlord is 'not fit and proper' to receive direct payments, but there is also a reluctance to pay the benefit to the claimant. In such a case would you, generally speaking,...</p>	<p>[READ OUT AND CODE AS MANY AS APPROPRIATE]  pay the landlord anyway  pay the claimant anyway  suspend payment of benefit  take some other action [PROBE AND WRITE IN _____]  (it depends)</p>
34	<p>We are interested in landlords' responses to the authority exercising its new powers. As far as you know have landlords ....</p>	<p>[READ OUT AND ENTER RESPONSE]  refused to take benefit claimants Yes No DK  evicted claimants Yes No DK  been abusive or threatening to Housing Benefit staff Yes No DK  been abusive or threatening to tenants Yes No DK  taken legal action against the local authority Yes No DK</p>

35	We would like to know your assessment of how the new powers affect your ability to tackle landlord fraud. Can you say whether you agree, disagree, or neither agree nor disagree, with the following statements.	<p>[READ OUT AND ENTER RESPONSE] (KEY: A = agree; D = disagree; N = neither)</p> <p>The new powers are a major contribution to tackling landlord fraud <span style="float: right;">A D N</span></p> <p>We expect to make increasing use of the new powers in the future <span style="float: right;">A D N</span></p> <p>The new powers have had little effect on tackling fraud <span style="float: right;">A D N</span></p> <p>The new powers have an important deterrent effect on landlords <span style="float: right;">A D N</span></p> <p>[NOW GO TO SECTION C]</p>
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**Questions 36-39: For authorities who have not used new powers**

36	Can you explain why you have not used the new powers yet?	[PROBE FULLY AND WRITE IN]
37	What level of staff will make decisions about stopping or refusing to make a direct payment to a landlord?	<p>[READ OUT; CODE ONE RESPONSE ONLY]</p> <p>Housing Benefit assessment officers</p> <p>Team leaders, or other supervisory staff</p> <p>Housing Benefit Managerial staff</p> <p>Fraud or investigation staff</p> <p>Other answer [WRITE IN _____]</p>
38	We are interested in the criteria or circumstances you will take into account in deciding that a landlord is not 'fit and proper' to receive direct payments. I will read out a number of examples which have been given to us. Can you say in each case whether, in your authority, you think you will use each of these criteria.	<p>[READ OUT AND ENTER RESPONSE]</p> <p>Landlord's failure in the past to report changes in tenants' circumstances <span style="float: right;">Yes No DK</span></p> <p>Landlord's record on repaying overpayments <span style="float: right;">Yes No DK</span></p> <p>Landlord has other debts owing to the authority <span style="float: right;">Yes No DK</span></p> <p>Housing Benefit fraud in the past <span style="float: right;">Yes No DK</span></p> <p>Landlord's properties are poorly maintained <span style="float: right;">Yes No DK</span></p> <p>Landlord has been threatening or abusive to Housing Benefit staff <span style="float: right;">Yes No DK</span></p> <p>Landlord has a criminal record <span style="float: right;">Yes No DK</span></p>

39	<p>We would like to know your assessment of how the new powers will affect your ability to tackle landlord fraud. Can you say whether you agree, disagree, or neither agree nor disagree, with the following statements.</p>	<p>[READ OUT AND ENTER RESPONSE]  (KEY: A = agree; D = disagree; N = neither)</p> <p>The new powers are a major contribution to tackling landlord fraud <span style="float: right;">A D N</span></p> <p>We expect to make increasing use of the new powers in the future <span style="float: right;">A D N</span></p> <p>The new powers will have little effect on tackling fraud <span style="float: right;">A D N</span></p> <p>The new powers will have an important deterrent effect on landlords <span style="float: right;">A D N</span></p>
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## SECTION C - SUSPENSION OF PAYMENTS TO CLAIMANTS

40	Have you made any suspensions of Housing Benefit payments to claimants since November 1997?	[RESPONDENT MUST ANSWER YES OR NO] Yes [GO TO Q.41] No [GO TO Q.49]
41	Have you specifically used the new powers that came into force in November 1997 in suspending payments to claimants?	Yes [GO TO Q.42] No [GO TO Q.50] DK [GO TO Q.50]
42	Since November, in how many cases have you used the new powers of suspension?	[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE] ENTER EXACT NUMBER _____ OR ENTER ESTIMATE _____ (DK)
43	What was the longest period of time you have suspended payments for under these new powers?	ENTER NUMBER OF WEEKS _____
44	What proportion of claimants responded within the time limits you set them?	[READ OUT; CODE ONE RESPONSE ONLY] the large majority of claimants more than half about half fewer than half only a small minority of claimants none at all (DK)

45	<p>We are interested in the criteria or circumstances you take into account in deciding to suspend payment to a claimant. I will read out a number of examples which have been given to us. Can you say in each case whether, in your authority, you have used each of these criteria. And could you say whether they are common or not?</p>	<p>[READ OUT AND ENTER RESPONSE]          (KEY: Y/C = yes, a common reason          Y/N = yes, but not a common reason          N = no examples of this reason in this authority)</p> <p>Suspicion that claimant is not resident          Y/C Y/N N DK</p> <p>Allegation that claimant is working          Y/C Y/N N DK</p> <p>Suspicion that claimant is in a collusive tenancy          Y/C Y/N N DK</p> <p>Housing Benefit fraud in the past Y/C Y/N N DK</p> <p>Suspicion of living together as husband and wife          Y/C Y/N N DK</p> <p>Inconsistent information provided by claimant          Y/C Y/N N DK</p>
46	<p>How many claimants or landlords have challenged or appealed against the decision to suspend Housing Benefit payments?</p>	<p>[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE]          ENTER EXACT NUMBER _____          OR          ENTER ESTIMATE _____          (DK)</p>
47	<p>And how many of these challenges or appeals were successful?</p>	<p>[PROBE FOR WHETHER ANSWER IS EXACT OR ESTIMATE]          ENTER EXACT NUMBER _____          OR          ENTER ESTIMATE _____          (DK)</p>

48	We would like to know your assessment of how the new powers affect your ability to tackle claimant fraud. Can you say whether you agree, disagree, or neither agree nor disagree, with the following statements.	<p>[READ OUT AND ENTER RESPONSE] KEY: A = agree; D = disagree; N = neither</p> <p>The new powers are a major contribution to tackling claimant fraud                      A D N</p> <p>We expect to make increasing use of the new powers in the future                      A D N</p> <p>The new powers have had little effect on tackling fraud                      A D N</p> <p>The new powers have an important deterrent effect on claimants                      A D N</p> <p>[END OF INTERVIEW]</p>
<b>Questions 49-51: For authorities who have not suspended payments to claimants</b>		
49	Can you say why you have not suspended any payments to claimants in this time?	<p>[PROBE FULLY AND WRITE IN]</p> <p>[NOW GO TO Q.51]</p>
50	Can you say why?	<p>[PROBE FULLY AND WRITE IN]</p> <p>[NOW GO TO Q.51]</p>
51	We would like to know your assessment of how the new powers affect your ability to tackle claimant fraud. Can you say whether you agree, disagree, or neither agree nor disagree, with the following statements.	<p>[READ OUT AND ENTER RESPONSE] (KEY: A = agree; D = disagree; N = neither)</p> <p>The new powers are a major contribution to tackling claimant fraud                      A D N</p> <p>We expect to make increasing use of the new powers in the future                      A D N</p> <p>The new powers will have little effect on tackling fraud                      A D N</p> <p>The new powers will have an important deterrent effect on claimants                      A D N</p> <p>[END OF INTERVIEW]</p>

**APPENDIX B**

**INTRODUCTORY LETTERS FROM DSS AND SPRU  
SENT TO LOCAL AUTHORITIES**





**DEPARTMENT OF SOCIAL SECURITY**

The Adelphi, 1-11 John Adam Street, London WC2N 6HT  
Telephone 0171-962 8000  
Gtn. 391

1 April 1998

Dear Housing Benefit Manager

*Research into Local Authorities' Use of Key Housing Benefit and Council Tax Benefit Discretionary Powers*

I am writing to ask for your help with a survey which the Department of Social Security has commissioned on the use of discretionary powers in the administration of Housing Benefit and Council Tax Benefit claims.

The aim of the research is to gather information on the use of certain discretionary powers: the exceptional hardship payment scheme and the power to withhold benefit where there are doubts about the propriety of the landlord or suspend benefit because of doubts about the eligibility of the claimant. Local Authority Associations have been informed of this research.

We have commissioned the Social Policy Research Unit (SPRU) at the University of York and Public Attitude Surveys Ltd (PAS) to undertake the research on our behalf. The study will be based on telephone interviews with all local authorities. Development work has already been carried out in a small number of local authorities.

We would very much like you to participate in this survey. This will involve a 20 minute telephone interview with the person in your local authority who would be best able to answer questions on exceptional hardship payments and the new discretionary powers. In order to carry out the research within our timetable we need to conduct the interviews after the Easter holiday. The accompanying letter from the Social Policy Research Unit explains more about how the research will be carried out.

Although your participation in this survey is voluntary, it is very important that as many local authorities are involved as possible. I can assure you that all information provided during the research will be treated in strict confidence by the research team. The results of this study will be presented in such a way that no individual or local authority can be identified in the report which is provided to the Department. Each participating authority will receive feedback on the findings of the study once it has been completed.

They will contact you in the next few days to discuss the research with you. If you would like to know more about the study, or if you have any queries, please do not hesitate to get in touch with Rachel Trott (0171 962 8555) here in the Department or the lead researcher from SPRU, Dr Roy Sainsbury (01904 433608).

Thank you in advance for your help with this research.

Yours sincerely

Bernard Mitton  
Housing Benefit Policy

1 April 1998

Dear Housing Benefit Manager

**Research into Local Authorities' Use of Key Housing Benefit and Council Tax Benefit Discretionary Powers**

Thank you for agreeing to take part in this project. The accompanying letter and fact sheet from the DSS explain the scope of the study and the roles played by the research team at SPRU and the survey agency PAS Ltd. I am sure that you will find the findings from the research interesting and useful.

I have enclosed a 'questionnaire outline' which explains the questions we would like to ask you during the interview. The work of developing the questionnaire has been assisted by the staff of 18 authorities in Great Britain who were visited by members of the York research team in February and March of this year.

Some of the questions require statistical data relating to your discretionary powers and you may have to prepare these in advance of the actual interview. The outline is intended as a guide. The exact wording of the questions may change following pilot testing of the questionnaire this week.

The discretionary powers that are the subject of the project fall into two distinct types. The first concern your powers established initially in January 1996 to grant exceptional hardship payments to claimants whose Housing Benefit awards have been restricted on the basis of a local reference rent or single room rent (Circular HB/CTB A7/96 contains the details). We ask about these in Section A of the questionnaire.

The second set of powers derive from the Social Security Administration (Fraud) Act 1997 and are intended to increase the capability of local authorities to combat Housing Benefit fraud. These are set out in Circular HB/CTB A48/97. We are aware that these powers only came into force in November 1997 but the Department is very interested in authorities' early experiences (or plans for the future). We ask about the new powers which relate to landlords in Section B of the questionnaire, and those relating to claimants in Section C.

The next step in the research study is that PAS will contact you direct to book a convenient time after the Easter holiday for the interview to take place. If you have any queries regarding the research I will be happy to answer them as best I can.

Yours sincerely

Dr Roy Sainsbury  
Research Team Leader