

## **DISCRETIONARY HOUSING PAYMENTS: GUIDELINES**

### **Introduction**

This document sets out the procedure for discretionary housing payments (DHPs) that are intended to provide claimants with further financial assistance, in addition to any welfare benefits, when an authority considers that help with housing costs is required. DHPs are made at the discretion of the authority and their purpose is to ensure that those who claim universal credit (UC) and/or housing benefit (HB) do not suffer high levels of hardship where there is a shortfall between the amount of rent due and the amount of benefit being paid.

Following the abolition of council tax benefit (CTB) from April 2013, DHPs are no longer made towards council tax liability.

### **Background**

DHP can be awarded to private tenants, council tenants and housing association tenants.

The use of DHP is directed by government guidance and a local policy. The Discretionary Financial Assistance Regulations 2001 ('the regulations') provide the legal framework that allows DHPs to be made.

### **What is meant by 'housing costs?'**

Housing costs are not defined in the regulations and this gives the Leicestershire Partnership authorities a broad discretion to interpret the term as they wish. If the customer is getting housing benefit (HB) housing costs mean rent (subject to certain exclusions). However, housing costs can be interpreted more widely to include:

- Rent in advance
- Deposits
- Other lump sum costs associated with a housing need such as removal costs

### **The use of discretion in making DHP decisions**

The regulations provide a very broad discretion in DHP decision making. The local authorities within the Leicestershire Partnership are committed to transparency and consistency of approach in its decision making around DHP. They will make their decisions in accordance with ordinary principles about good decision making and in line with the duty to act fairly, reasonably and consistently. Each case will be decided on its own merits and the decision making will be consistent throughout the year.

### **Support for all tenancy types**

DHP will be used by the Partnership authorities to manage the impact of welfare reform on private sector, council and other social housing tenants.

### **Support for specific groups affected by welfare reform changes**

The Partnership authorities have limited 'baseline' funding to provide support for customer's unspecified circumstances. Following recent welfare reforms the Government funding contribution has been increased to support specific groups of people, as follows:

- Those affected by local housing allowance reductions
- Those affected by the benefit cap
- Those affected by the size criteria in social rented sector

The awards application process for funding under any of these headings will be the same; the Partnership authorities will consider the responses to a range of DHP criteria questions to establish whether the applicant is eligible for DHP support, after which the level of financial assistance will be determined by the financial calculation statement. The expectation is that those in receipt of Disabled Living Allowance (DLA)/Personal Independence Payment (PIP) will incur additional housing costs to accommodate their individual needs.

### **General 'baseline' funding**

The Partnership authorities have general discretion to make awards from this funding stream. The funding is not limited to any specific groups of people.

### **Local Housing Allowance (LHA) restrictions**

Major changes have come into effect for housing benefit. They signal the start of a radical transformation of welfare benefits leading up to the introduction of universal credit.

Recent changes include:

- Setting LHA at the 30th percentile of rents in each broad rental market area, rather than the median as was previously used
- Increases in the amount deducted in non-dependant deductions
- An absolute upper limit on the amount of housing benefit that can be paid out for any family receiving LHA
- Freezing LHA rates for the year from April 2012, in advance of new annual uprating from April 2013
- An increase from 25 years to 35 years in the relevant age for the LHA shared room rate

The Partnership authorities are receiving an increase in demand for DHPs as a result of these changes. It may not be possible to meet the demand in full from the funds available. Awards will be made on a discretionary basis. Each case will be decided on its own merits and the decision making will be consistent throughout the year.

### **The benefit cap**

From July 2013 total household benefit payments for working-age claimants have been capped so that workless households will no longer be entitled to receive more in benefit than the average weekly wage, after tax and national insurance. Initially the cap will be administered by local authorities through housing benefit payments. From October 2013 the cap will be applied through universal credit, starting with all claimants setting up a universal credit account including those migrated from existing benefits. Total entitlement to benefit payments will be capped at £500 per week for couples and lone parent households. The level of entitlement for single adults will be capped at £350 per week.

Changes to DHP funding are intended to provide short-term, temporary relief to families who may face a variety of challenges which prevent them from being able to move immediately or to help manage families move into more appropriate accommodation. It is specifically aimed at a number of groups who are likely to be particularly affected by the benefit cap. These include (but are not limited to):

- Those in supported, exempt or temporary accommodation
- Individuals or families fleeing domestic violence
- Those with kinship care responsibilities
- Individuals or families who cannot move immediately for reasons of health, education or child protection
- Households moving to more appropriate accommodation

### **The size criteria in the social rented sector**

From April 2013 the Government introduced size criteria for new and existing working age housing benefit claimants living in the social rented sector. The size criteria has replicated the size criteria that applies to housing benefit claimants in the private rented sector and whose claims are assessed using the local housing allowance rules. The applicable maximum rent will be reduced by a national percentage rate depending on the number of spare bedrooms in the household.

This additional resource is intended for those affected by this measure who are unlikely to be able to meet the shortfall and for whom moving to a smaller property may be inappropriate. It is aimed specifically at - disabled people living in significantly adapted accommodation (including any adaptations made for disabled children); to allow for an extra bedroom for a foster child or children of an approved foster carer and to ensure that the parents of armed forces personnel who are away from home on active duty.

Additional funding has been included in the Department for Works and Pensions (DWP) DHP allocation to cover 'size criteria' which is being made available for two years effective from April 2013.

### **Spending the full Government DHP allocations**

During the course of a financial year the Partnership authorities will aim to spend as a minimum the full allocation of government DHP funding in respect of these relevant groups. The authorities may also decide to contribute an additional amount up to a cash limit of two and a half times the government's baseline funding contribution; but they are not bound to do so.

### **Objectives to be considered when deciding DHP awards**

The DWP have identified certain objectives that authorities may wish to bear in mind when considering whether to make an award of DHP. These include:

- The alleviation of poverty
- Encouraging and sustaining people in employment
- Homelessness prevention and tenancy sustainment
- Safeguarding residents in their homes
- Helping those who are helping themselves
- Keeping families together
- Supporting domestic violence victims who are trying to move to a place of safety
- Supporting the vulnerable or the elderly in the local community
- Helping customers through personal and difficult events
- Supporting young people in the transition to adult life
- Promoting good educational outcomes for children and young people

The Partnership authorities have adopted these broad objectives as their base objectives for considering DHP awards.

These objectives contribute to the corporate aims of the Partnership authorities as follows:

#### **Harborough District Council**

- Priority two - To provide the right public service to the right standard at the right price
- Priority four - To support the vulnerable in our society at the heart of the communities where they live

#### **Hinckley & Bosworth Borough Council**

- Aim two - Thriving Economy
- Aim four - Strong and distinctive communities

- Aim five - Decent, well managed affordable housing

### **North West Leicestershire District Council**

- Aim three - Families in Need are Supported by the council

### **The Leicestershire Partnership authorities' strategy to take account of increased demand for DHP**

Given the numbers of people affected by the welfare reform changes relating to benefit capping, size criteria in the social rented sector and reductions in local housing allowance, awarding DHPs to meet all shortfalls will not be a viable option.

The Partnership authorities will each consider how best to target the funding within their priority groups, whilst also ensuring that each case is considered on its own individual merits.

The Partnership authorities have identified that the following groups should be regarded as prioritised groups that could be offered assistance to stay in their home:

- Families with children at a critical point in their education
- Young people leaving local authority care
- Foster carers, including those between placements
- People going through the approval process to become foster carers who may need to show that they have a spare room to be approved
- Families with kinship care arrangements
- Families with a child temporarily in care but who is expected to return home
- Families with a social services intervention, for example highly dependent adults, children at risk or involvement in a family intervention project
- People who have had to flee domestic violence or have moved because of the threat of violence in another area
- Where someone in the household is expecting a baby (including those currently in shared accommodation or subject to an under-occupation reduction)
- Ex-homeless people being supported to settle in the community
- People with health or medical problems who need access to local medical services or support that might not be available elsewhere
- People with disabilities who need, or have had, significant adaptations made to their property, or where they are living in a property particularly suited to their needs
- Where the claimant or someone in their household has a disability which requires them to have a larger property than would usually be the case for the size of their household

- People with disabilities who receive informal care and support in their current neighbourhood from family and friends which would not be available in a new area
- Households with disabled children who require an overnight carer
- The elderly frail who have lived in the area for a long time and would find it difficult to establish support networks in a new area
- People who need to live near their jobs because they work unsocial hours or split shifts; or where moving home may mean living in an area where public transport would be inadequate to enable them to sustain their current job
- Single under 35's, with priority being given to the following households:
  - Where the claimant is in receipt of any element of DLA
  - Any history of rehabilitation from drug or alcohol related dependency
  - Cases placed through the Homeless Teams
  - Those who have exhausted their options through the Homeless Prevention Fund
  - Those within six months of their 35<sup>th</sup> birthday

### **How a claim is made**

Applications will be received, processed and determined by the Benefits Section in the partnership. Applications can be received in writing, electronically, in person; and it can be accepted from anyone who is acting on the customer's behalf. It will be necessary however for the financial calculation statement included in the DHP application form to be completed for the application to be considered. This must be signed by the claimant.

### **Criteria to be applied in deciding DHP awards**

In order to meet the stated objectives through the DHP award process, the authorities will consider the application under a range of criteria that fall under the broad headings of:

- Financial circumstances
- Prevention of homelessness
- Sustaining tenancies
- The household's medical circumstances
- Other general circumstances

### **Financial circumstances criteria**

The points to be considered will include but not be limited to the following:

- Does the customer have other debts to pay?
- Have they sought advice on how to clear their debts and are they actively following that advice?

- Can the customer re-negotiate non-priority debts, such as credit card agreements?
- Is the customer entitled to other welfare benefits and not claiming them?
- Do they have any capital or disregarded income that they could use to make up the shortfall (bearing in mind its intended purpose)?
- Can the claimant cut back on spending on non-essential items
- Is the customer taking long-term action to help problems in meeting their housing costs?
- Can the customer increase their hours or do any overtime?
- Is the customer in work but with high travel costs, because of split shifts for example?
- Does the application relate to anyone in receipt of any element of DLA/PIP?

### **Prevention of homelessness criteria**

Homelessness can have a negative impact for the household concerned in terms of health, education and employment prospects. Also, temporary accommodation used to house the homeless can be expensive. Therefore, early intervention to prevent homelessness is a key issue for the Partnership authorities.

The Partnership authorities will take into account whether or not the DHP:

- Would prevent the household from being evicted and thus becoming homeless
- Would be central to the person being able to access or maintain employment, education or training and thus be less likely to become homeless
- Help to increase the long-term sustainability of accommodation occupied by households who have previously been homeless
- Relates to a case placed through the Homeless Teams
- Relates to a case in which options through the Homeless Prevention Fund have been exhausted?

### **Sustaining tenancies criteria**

There are a number of challenges to enabling people to access and sustain accommodation in the private rented sector. As at mid-2012, the housing department in one Partnership authority reported that an increasing number of landlords are choosing to end tenancies, for example because they wish to sell the property. This has been identified as one of the main reasons for homelessness in the district.

The current welfare reform measures are expected to reduce benefit paid to those living in the sector. Housing benefit claimants currently occupy about 40% of the 3.6m homes in Great Britain's private rented sector (PRS) and the Government's own equality impact assessment shows that the measures are

likely to reduce payments to virtually all private tenants who claim local housing allowance, with an average cut of twelve pounds a week per claimant.

The Partnership authorities will take into account:

- Whether or not the DHP would enable the accommodation to become affordable in the interim, allowing the tenant time to find alternative accommodation
- Whether the tenant could leave the tenancy without incurring a financial penalty
- Whether the tenant could afford the tenancy before they took it on

As part of linked work to sustain tenancies, the Partnership authorities will work to develop sustainable tenancy strategies between their housing advice, landlord services and homelessness sections, and local homelessness organisations and those operating rent deposit schemes in the local area. They will also provide help to customers to negotiate a lower rent if the customer feels unable to attempt to do so themselves.

### **Household medical circumstances criteria**

The Partnership authorities will determine whether any of a range of points applies, including the following:

- Does the household have health or support needs which require them to remain in a particular property?
- Does the household have a health problem which means that the choice of housing is restricted either temporarily or permanently?
- Does the customer require an extra room because of a health problem that affects them or a member of their household?
- Does the household have to live where they do because of the need for access to medical or support services – for example, a particular hospital?
- Does the household have extra health-related expenses, such as the need for therapeutic classes or non-prescription medicine?
- Does the application relate to anyone having a history of rehabilitation from drug or alcohol related dependency?

### **‘Other circumstances’ criteria**

When deciding whether to award DHP, the Partnership authorities will determine whether any of a range of points apply, including the following:

- Is the customer fleeing domestic violence so they do not have time to shop around for a reasonably priced property?
- Does the household have to live in a particular area because the community gives them support or helps them contribute to the district?



- Is the customer expecting a child and had her HB restricted to that of smaller accommodation until the child is born?
- Is the customer a single person living in an area where there is a shortage of shared accommodation?
- Is the customer a care leaver who has a reduction in their LHA rate after becoming 22 years old?
- Is there is a particular reason that the customer chose to live in this accommodation?
- Is the property the cheapest available in the area for the household's needs?
- Does living in the area mean a better chance of employment?
- Would it be helpful to pay DHPs when a training scheme is almost, but not yet complete?
- Would it be helpful to pay DHP where the household contains children at a critical point in their education?
- Is someone in the household undertaking care duties for relatives in the neighbourhood?
- Is the person under 35 expecting a baby?

### **Financial calculation statement**

To ensure that a consistent approach to applications is maintained, a DHP financial calculation statement must be completed. This will provide information regarding the customer's income from all sources, which will be compared against expenditure to determine if there is a shortfall of income against expenditure. Items of non-essential spending may be disregarded.

The Council will consider if the amounts of expenditure for specific items seem accurate and realistic, taking into account the size and circumstances of the household. Further explanation or evidence of expenditure may be requested and if no suitable evidence or explanation is provided, a more reasonable figure for the item in question may be used instead.

The application will then be processed, taking into consideration the level of the shortfall between expenses and income.

Items of expenditure that may be deemed to be non-essential include: social and entertainment expenditure; pocket money for children; gym membership; sports and club membership; alcohol; cigarettes and tobacco; private medical or dental healthcare.

The Partnership authorities will include all income which will also include that from disability related benefits. They will also take into account all reasonable costs suitable for the circumstances of the household.

## **Overpayments of HB**

Regard will be had to any outstanding overpayments, as reducing the rate of recovery may be a better approach than a DHP award. DHP cannot be used to repay an overpayment. .

## **The level of a DHP**

The DHP will not exceed the weekly eligible rent.

## **Deciding the period of payment**

The length of time over which an award of DHPs will be paid will depend upon the circumstances of the individual case. The Partnership authorities will consider:

- Whether the need is likely to be short-term
- Whether the customer is likely to require assistance in meeting their housing costs for as long as they remain in the property
- Whether it could be paid until the earliest opportunity that cheaper accommodation could reasonably be sought
- Whether it could be paid until a particular milestone, such as the end of training, first possible break clause in a tenancy

Anticipated changes of circumstances which affect the customer's income or benefit entitlement must be taken into consideration when determining the period of time over which the award is to be made. Where this is likely a review must be undertaken following the change of circumstances to determine if the amount of DHP is still appropriate.

A previous award of DHP or a refusal of an award will not affect any subsequent application.

## **When a DHP payment can start**

A payment can only be considered for a period where there is a linked entitlement to HB or UC.

## **What DHPs cannot cover**

### **Ineligible charges:**

Service charges that are ineligible for HB cannot be covered by a DHP. These are as specified in Schedule 1 to the Housing Benefit Regulations 2006 and Schedule one to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. Nor can DHPs cover charges for water, sewerage, and environmental services – as defined and calculated under the HB provisions.

**Increases in rent due to outstanding rent arrears:**

Regulation 11(3) of the Housing Benefit Regulations 2006 and Regulation 11(2) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 refer. This refers to those cases where a claimant's rent is increased on account of outstanding arrears which are owed by the claimant in respect of their current or former property.

**Sanctions and reductions in benefit:**

DHPs cannot meet these because to do so would undermine the effectiveness of the sanctions or reduction in benefit. These are:

- Any reduction in income support (IS) or income-based jobseeker's allowance (JSA(IB)) due to a Reduced Benefit Direction (RBD) for failure to comply with the Child Support Agency in arranging maintenance. The RBD is a reduction in benefit of 40% of the personal allowance and only applies to IS or JSA(IB)
- Any reduction in benefit as a result of non-attendance at a work-focused interview. This applies both where the person's HB/CTB is reduced and when any other benefit that the person is receiving, such as IS is subject to a sanction
- Any reduction or loss of benefit due to a JSA employment sanction. JSA is not payable for the period of sanction if they have contributed towards their unemployed status, for example, by leaving employment voluntarily or failing to attend a prescribed training scheme. In such cases, it may be possible for a reduced rate of JSA to be paid under the JSA hardship provisions
- Any reduction in benefit due to a JSA sanction for 16/17 year olds – for certain young people who receive JSA under a Severe Hardship Direction. JSA is not payable for the period of the sanction if they have contributed towards their unemployed status, for example, by leaving unemployment voluntarily or failing to attend a prescribed training scheme
- Any restriction in benefit due to a breach of a community service order

**Benefit suspensions:**

HB can be suspended either because there is a general doubt about entitlement or because a claimant has failed to supply information pertinent to their claim. In such cases, it would not be permissible to pay DHPs instead. One of the intentions of the suspension provisions is to act as a lever to ensure that the claimant takes the necessary steps to provide the authority

with the necessary information/evidence - paying DHPs could reduce the effectiveness of this lever.

### **Shortfalls caused by HB overpayment recovery:**

When recovery of an HB overpayment is taking place, such shortfalls should not be considered for a DHP.

### **Disputes Process**

A Benefits Team Leader will consider the DHP application and advise the claimant of the decision in writing as soon as is reasonably practical, stating the reasons for a negative decision.

The customer can request a reconsideration of the decision, or of a cancellation or recovery of DHP. Details about the process for requesting a reconsideration and the timescale to be followed will be provided to the customer when the negative decision is communicated to the customer. The decision will be examined again in the light of any new representations made by the customer.

This request for reconsideration should be made within a calendar month of the initial decision. The reconsideration will be made in line with the normal reconsideration and appeals process and will be undertaken by a different Benefits Team leader.

If a further dispute is received following the reconsideration, the case will be passed to the Senior Management team for review. The next stages in a dispute would be going to Judicial Review, or to the local government ombudsman if there is an allegation of maladministration.

### **Stopping the payment of a DHP**

There are instances other than a change of circumstances when DHPs can be stopped.

The Partnership authorities will stop making any further DHPs:

- If it decided that DHPs are being, and/or have been, made because someone has misrepresented or failed to disclose a material fact, fraudulently or otherwise
- When they have been paid as a result of an error

### **Overpaid DHPs**

The Partnership authorities will recover DHPs if they decide that payment has been made as a result of misrepresentation or failure to disclose a material fact, either fraudulently or otherwise. The authorities may also recover DHPs if

it is decided they have been paid as a result of an error made when the claim was determined.

DHPs cannot be recovered from on-going HB, nor from other prescribed benefits. Therefore the only method of recovery if a DHP is overpaid is to request repayment of the debt from the claimant. The Partnership authorities may choose to pursue recovery via the courts and debt collection agencies.

### **Monitoring and reviewing how DHP is being used**

DWP will monitor how DHPs are being used to support customers affected by the welfare reforms. In addition to the annual DHP claim form, LAs will need to provide a broad breakdown of their expenditure. Following a successful application for DHPs, the Partnership authorities will record the main reason for the award, as detailed below:

- To support customer affected by benefit cap
- To support customer affected by social sector size criteria
- To support customer affected by LHA reforms
- Any other reason

Over and above this mandatory recording requirement, the Partnership authorities will put in place additional monitoring of DHP awards to gain understanding about the reasons for financial hardship, follow-up with customers to understand the outcomes that result from DHP and whether the situation has been resolved. This data will be used improve the DHP awards process in subsequent years and to assess value for money.