

Discretionary Housing Payments Best Practice Guide

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Introduction

Purpose of this guidance

- 1 This guidance
- updates *Guidance for Local Authorities on the Operation of Discretionary Housing Payments* issued in March 2001
 - provides examples of good practice, see *Annex A*

2-9

What are Discretionary Housing Payments?

10 Discretionary Housing Payments (DHPs) provide claimants with further financial assistance when a local authority (LA) considers that help with housing costs is needed.

11 The regulations covering DHPs are *The Discretionary Financial Assistance Regulations 2001* referred to in this guidance as 'the regulations'.

12 You should be aware that although the legislation gives you a very broad discretion, decisions must be made in accordance with ordinary principles about good decision making, ie administrative law. In particular, LAs have a duty to act fairly, reasonably and consistently.

13 Once you have met your authority's overall cash limit you cannot award any more DHPs. By cash limit we mean two and a half times your government contribution. If you award above this limit, you are breaking the law. The legislation which specifies the overall limit on expenditure is *Article 7 of The Discretionary Housing Payment (Grants) Order 2001*. However, any unspent DHP funding will have to be returned to DWP.

14 You should also be aware that the amount of money you have left from your government contribution must not be a factor in your decision making. Each case must be decided on its own merits.

15-19

20-99

What do we mean by housing costs?

20 If the claimant is getting

- Housing Benefit (HB), housing costs generally mean rent (subject to certain exclusions)
- Council Tax Benefit (CTB), housing costs mean council tax liability

See *Deciding whether to award a DHP* later in this guidance for more details.

21-29

What do we mean by 'further financial assistance'?

30 There is no further definition of the phrase 'further financial assistance' in law. It is up to you how you interpret it.

31 The level of award may cover all or part of a shortfall. See *Administering DHPs, The Level of a DHP* later in this guidance.

32-99

Claiming a DHP

The claims process

- 100 Our regulations say that to make a DHP there must be a claim for a DHP.
- 102 However, that does not necessarily mean that there has to be a written claim form. How you choose to operate the claims process is up to you. If you decide not to use a written claim form you may instead decide to accept claims by another means, for example by telephone, or electronically.
- 103 Although you can institute your own procedures as to what constitutes a claim in each case, there has to be something in each instance which triggers the claim. This could be something as simple as a telephone call asking the claimant if they wish to claim DHPs. You should also bear in mind that LAs have a duty to act consistently.

104-109

Who can claim DHPs

- 110 In most cases, the person who claims a DHP will be the person entitled to HB or CTB.
- 111 However, you may also accept claims from someone acting on behalf of the person concerned, such as an appointee, if you consider it reasonable to do so.

112-119

Who you can pay

- 120 DHPs may be paid to someone other than the claimant if you consider it reasonable to do so.
- 121 That could be an agent, an appointee or a landlord. In the case of a person entitled to rent rebate or CTB, DHPs can be credited to the rent rebate or council tax account.

122-129

130-199

Information a claimant must give

130 When someone claims a DHP, they must give you

- information you may require to make a decision or look at a decision again, and
- any other information you may require in connection with their claim

132-139

Telling the claimant of the decision

140 If someone claims a DHP, you must tell that person of the DHP decision, in writing and with reasons, as soon as is reasonably practicable. You must be consistent and avoid unnecessary delay.

141 When issuing a decision you may also want to provide information about the process for reviewing the decision that you have in place. As DHPs are discretionary arrangements, there are no appeal rights to an HB/CTB tribunal, although the route of Judicial Review is available, see *Disputes* later in this guidance.

142 You should also clearly distinguish the dispute/appeal rights that apply to HB/CTB. It is important that claimants are not inadvertently led to believe that such appeal rights also apply to DHPs.

143 There is no legal requirement to notify landlords of a DHP decision, but you may wish to do so. However, you should be careful not to breach any obligations of confidentiality owed to the claimant, including

- under *Article 8 of the European Convention on Human Rights (ECHR)*(*right to respect for private and family life*), or
- data protection law

144-149

Backdating a DHP

150 You should look at each claim on its own merits when deciding whether or not to backdate a DHP.

151 Unlike with HB/CTB, there are no rules on backdating, but you do have a duty to act consistently.

152 We have amended the regulations to make it clear that a DHP can only be considered for a period where the linked HB or CTB is payable. This is of particular relevance to requests for a period of backdated DHP.

153-199

Administering DHPs

Who can accept claims?

200 Only an LA can accept claims for DHPs.

201 As DHPs are not HB or CTB, provisions which allow Jobcentre Plus or Pension Service offices to accept claims in certain circumstances do not apply.

202-209

Who can administer DHPs?

210 Who administers DHPs is entirely up to you.

211 Your authority has the choice as to who, or which department, within your LA will administer, determine and award DHPs.

212-219

Method of payment

220 DHPs may be delivered via HB/CTB payment systems and may also be paid on HB/CTB instruments of payment.

221 However

- the authority must be able to differentiate, in any given case, between HB/CTB and DHPs, ie there must be a clear audit trail, and
- if a DHP is paid with HB/CTB, notifications to the claimant must clearly show how much is HB/CTB and how much is DHP

222-229

Contracting out

230 A contractor

- cannot make decisions on DHPs
- may carry out tasks connected with the administration of DHPs

231-299

Deciding whether to award a DHP

What are the criteria for award?

300 Before you make an award you must be satisfied that the claimant

- is entitled to HB or CTB, or both, and
- requires further financial assistance with housing costs

301-309

What types of shortfalls can DHPs cover?

310 The various types of shortfalls that a DHP can cover include

- Rent Officer restrictions such as Local Reference Rent (LRR), Single Room Rent (SRR), size criteria or when the Local Housing Allowance (LHA) does not meet the rent
- non-dependant deductions, and
- income tapers

311-319

What DHPs cannot cover

320 There are certain elements of a claimant's rent that cannot be included in housing costs for the purposes of a DHP because the regulations exclude them.

321 Excluded elements are

- ineligible service charges
- increases in rent due to outstanding rent arrears
- shortfalls in the second adult rebate elements of a claimant's CTB, and
- certain sanctions and reductions in benefit

See *Annex A* for more details

323-329

330-359

Income and other resources

330 You decide how you treat any income or other resources for the purposes of deciding whether to award a DHP.

331 For example, you may, or may not, decide to disregard income from disability related benefits as they are intended to be used to help pay for the extra costs of disability. However, you may want to bear in mind that such money might be committed to other liabilities for which the money was intended, such as Motability schemes, provision of care etc.

332-339

The level of the DHP

340 It is entirely up to you how much of a shortfall that you decide to meet by way of a DHP.

341 However, the level of HB/CTB plus the DHP must not exceed

- the weekly eligible rent on their home, or
- their council tax liability

342 Eligible rent means all the payments specified in *Regulation 12(1) of the Housing Benefit Regulations 2006* or the *Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006* except those specified in *Regulation 12(3)(b)(i) to (iii)* of those regulations, ie deductions in respect of certain specified service charges.

342-349

Payment cycles

350 You can decide

- the frequency of payment, and
- whether to pay in advance or arrears

351-359

Rent deposits and rent in advance

360 You can make DHPs for a rent deposit or rent in advance schemes for a property that the claimant is yet to move into if they are already entitled to HB for their present home.

361 The regulations are wide enough to permit this on the basis of a claimant's entitlement to HB at their current home. The regulations do not say that the housing costs to which the DHP relates have to be housing costs relating to the property for which HB has been awarded. It is the limitation on the level of a DHP that relates to the property in respect of which HB has been awarded. See *The level of the DHP* earlier in this section.

Example

A person in property **A** is receiving HB.

They apply for a DHP to cover rent in advance and deposit in respect of property **B** which they hope to move into.

The regulations will permit a DHP in relation to property **B** but the level of the DHP is limited by the HB award in respect of property **A**.

362-369

DHPs and two homes

370 The regulations permit a person to have help through DHPs with rent due on a property they have moved into when treated as temporarily absent from their home, for example because of domestic violence.

371 The regulations do not say that DHPs can only be paid in respect of rent on a person's home, they just limit the amount that can be paid when the DHP does relate to rent on a person's home.

372 The situation for council tax is different because as far as council tax is concerned there is no reference to occupancy of the home. So DHPs can meet an amount equal to the council tax liability on as many homes as that person has.

373-399

Claim maintenance

Length of award

- 400 The length of time over which you can pay an award is up to you.
- 401 It may be appropriate for you to make a short term award to give a claimant time to sort out their financial circumstances or you may wish to make an indefinite award until the claimant's circumstances change. The start and end dates of an award are up to you.
- 402 When there is a specific end date, you should make it clear to the claimant what the period of the award is.
- 403-409

Change of circumstances

- 410 A claimant getting DHPs is required to notify you of any changes of circumstances which may be relevant to their continuing to get DHPs.
- 411 You need to make sure the recipient is aware of the changes they should report. There is no statutory timescale for notification; it is for you to decide. It is also for you to decide the means by which such changes are notified.
- 412 Many changes of circumstances that claimants have a duty to report for HB/CTB purposes may also be relevant to their continuing to get DHPs. You may use such information to review the level of the DHP.
- 413-419

When you can stop paying a DHP

- 420 There are instances other than a change of circumstances when DHPs can be stopped.
- 421 You can stop making any further DHPs
- if you decide 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
- 421-429

430-499

Overpaid DHPs

430 You can recover DHPs in certain circumstances.

431 Consider recovery if you decide that payment was made as a result of

- misrepresentation or failure to disclose a material fact, fraudulently or otherwise
- an error made when the claim was determined

Recovery from ongoing HB or CTB

432 You may not recover DHPs from ongoing HB or CTB.

433 This is unlike the situation for HB overpayments and CTB excess benefit, where the regulations allow you to recover from ongoing HB/CTB. There is no provision for recovery of overpaid DHPs from other benefits.

Note: We propose to amend the regulations, to take effect from 7 April 2008, to make it clear that DHPs cannot make up a shortfall caused by recovery of an HB/CTB overpayment.

434-499

Dispute procedures

Introduction

- 500 The LA can review a DHP decision in the event of disputes.
- 501 However, decisions on DHPs cannot be appealed to an HB/CTB tribunal as they are not empowered to deal with them. The route of judicial review is available, and the local government ombudsman if there is an allegation of maladministration.
- 502 There is flexibility as to how you apply any dispute process. You may look at a decision again in the light of representations made by the claimant (in whatever form you decide) or whenever you consider it appropriate for whatever reason. You may also review a DHP decision in the event of a dispute either at the time of the initial rejection or subsequent to a cancellation or recovery. We do not set out circumstances in any more detail. However, you do need to be consistent.

503-509

Reviewing the decision

- 510 You may also decide who in the authority may look at a decision again.
- 511 To minimise the risk of legal challenge you are advised to ensure that the review is carried out by someone other than the person who made the original decision.

512-519

Notifying the claimant

- 520 Notify the claimant of a review outcome
- in writing
 - with reasons
 - as soon as is reasonably practical

521-599

Good practice - examples

Overview

Background

- 1 These good practice examples are to help you to decide whether or not to award a DHP.
- 2 But first and foremost you should be aware that this is a discretionary scheme. Therefore you should consider each case on its own merits rather than on a set of rigid pre-defined criteria.
- 3 A policy that is too rigid will effectively prevent you from exercising your discretion properly in individual cases. This could make some of your decisions vulnerable to challenge by judicial review.
- 4 However, this does not mean that you must not develop a policy at all, it simply means that your policy must be flexible and allow for deviation for unusual cases, however rare.
- 5 The examples are simply ideas as to what you may wish to think about when considering a DHP. You should bear in mind that in some cases, there may be a good reason for doing things differently.
- 6 You may want to consider a process for monitoring the decisions made in relation to DHPs. This could help you to ensure compliance with the duty to act fairly, reasonably and consistently.

7-9

Objectives for award

- 10 Some authorities have certain objectives in mind when considering whether to make an award of DHP. These include
- alleviating poverty
 - encouraging and sustaining people in employment
 - tenancy sustainment and homelessness prevention
 - safeguarding residents in their own homes
 - helping those who are trying to help themselves
 - keeping families together
 - supporting the vulnerable in the local community
 - helping claimants through personal and difficult events, or
 - supporting young people in the transition to adult life

11-19

Communications

- 20 Good communication is important, both in the context of letting people know about the existence of the DHP arrangements in the first place and information about the awards themselves. You may wish to consider the following methods of communication
- Information on the HB/CTB notifications.
 - Leaflets and posters.
 - Giving advice on DHPs when people come to the LA to discuss a claim.
 - Informing external and internal bodies that give advice to claimants, of the existence of DHPs.
 - Including DHP advice as part of your general welfare advice services.
 - Information on your LA website.
 - Information about the DHP decision on the HB/CTB notification form (but you should make it clear that DHPs are not HB/CTB and you should specify the amount of the DHP).
 - Letting the claimant know the reasons for an award decision (be it positive or negative), the start and end dates of the award – and the reason for those dates.
 - Informing the claimant of their dispute rights (if you have a disputes procedure).
 - You may wish to visit claimants in their own home as it helps to confirm their circumstances, and establish what further help or advice they require.

Administration of DHPs

- 21 It is entirely up to you how you administer the DHP arrangements but you may wish to consider the following suggestions
- Would using the same payment cycles as the claimant's HB/CTB make the system easier to operate?
 - A second member of staff could check the decision to ensure consistency.
 - One option may be to set up a panel to consider applications on, say, a fortnightly basis. This could bring together colleagues with a wide range of skills and experience to help inform the decision making process.
 - You could set up a system, eg a spreadsheet, to ensure awards are reviewed and monitored.
 - When a change of circumstances means that an award of HB/CTB is reviewed, you could review the DHP award at the same time, as the change of circumstances may mean that the criteria for DHP are no longer met.
 - You could identify at the time of the first award whether a second award might be necessary, and issue a review form prior to the end of the award asking what action has been taken during the period of the award.
 - Paying DHPs from the date on the application form would make things more transparent for both LAs and claimants, though backdating and paying in advance is allowable.
 - Claimants normally have to arrange their finances quickly and so you could ensure that decisions on DHP claims are made within four weeks.

22-29

Disputes procedures

- 30 It is good practice to have a disputes procedure. This could also help to reduce the probability of a legal challenge. Examples of good practice are
- Involve an officer other than the one who made the original decision, or possibly a more senior officer, when looking at a decision again.
 - The decision letter should clearly state the reasons for a negative decision.
 - Claimants know who they can complain to in the first instance.
 - Claimants are given some idea how long the process will take.
 - If they disagree with the first decision they should know where they may go next.

31-39

Considering a DHP award – further examples of good practice

- 40 The following are examples of good practice (in the form of questions you may wish to consider or facts that you may wish to take into account) that you may find helpful when considering a DHP award. What questions you decide to ask and how you form a decision based on the responses to such questions is up to you. Each case should be treated individually.

Prevention of homelessness

- 41 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 should be a key issue for LAs. You may wish to consider how DHPs could help, by taking the following into account
- A DHP would prevent the household from being evicted and thus becoming homeless.
 - The proximity of the accommodation to education, employment, and social networks means that it would be helpful to pay DHPs at least in the first few months of resettling from homelessness.
 - An award of DHP would be central to the person being able to access or maintain employment, education or training and so they are thus less likely to become homeless.
 - Paying DHPs to households, who have previously been homeless, would help to increase the long-term sustainability of their accommodation.
 - You could work with homelessness organisations, and those operating rent deposit schemes, as well as your council's homeless section to prevent loss of tenancy.

The tenancy

- 42 You could consider the following issues concerning the tenancy
- Is there scope for the landlord to reduce the rent.
 - Has the claimant actually asked the landlord to reduce the rent and what did the landlord say?
 - You could help the claimant to negotiate a lower rent or when appropriate negotiate a lower rent on their behalf.
 - Is it possible for the tenant to leave the tenancy before the due date?
 - Is the claimant willing to let out a room?
 - Did the claimant find out about the level of HB/CTB they could expect to receive before they took on the tenancy?
 - Did the claimant undertake a pre-tenancy determination before accepting the tenancy?

The household's financial circumstances

- 43 Although there are no rules on the financial issues to be taken into account when considering the award of DHPs, you may wish to think about the following
- Does the claimant have other debts to pay?
 - Have they sought advice on how to clear their debts?
 - Can the claimant re-negotiate non-priority debts, such as credit card agreements?
 - Is the claimant 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)?
 - Is there anyone else willing to make up the shortfall?
 - Can the claimant change their spending pattern on non-essential items?
 - Is the claimant taking long-term action to help their problems in meeting their housing costs?
 - Could the claimant afford the rent when they moved in?
 - Is the claimant in work but with high travel costs, because of split shifts for example?

The household's medical circumstances

- 44 You may wish to consider whether the following apply
- 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 claimant 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?

Other circumstances

- 45 There may be other circumstances applying to the claimant or a member of their household which you think need to be taken into account. For example
- Is the claimant 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 claimant expecting a child and had her HB restricted to that of smaller accommodation until the child is born?
 - Is the claimant a single person under 25 who is expecting a child and who would thus no longer be subject to the Single Room Rent once the child is born?
 - Is there is a particular reason that the claimant 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?
 - You could consider paying the DHP to those returning to the workplace as an encouragement for others to do the same.

Likely duration of award

- 46 The length of time over which an award of DHPs can be paid is up to you, but you may find it helpful to consider the following
- Is any need likely to be short-term?
 - Is the claimant likely to require assistance in meeting their housing costs for as long as they remain in the property?
 - You could consider paying DHPs until the earliest opportunity that cheaper accommodation could reasonably be sought.
 - You could consider paying DHPs until a particular milestone, such as the end of training, first possible break clause in a tenancy, individual becomes 25 and so on.

Backdating of DHPs

- 47 When backdating an award you may wish to consider
- the claimants age
 - health
 - circumstances
 - make-up of household
 - the local housing market

What DHPs cannot cover

- 1 These are the elements of a person's rent or council tax, and shortfalls in benefit that cannot be met by a DHP under the legislation.
- **Ineligible charges:** service charges that are not eligible for HB cannot be covered by a DHP. These are as specified in *Schedule 1 to the Housing Benefit Regulations 2006* and *Schedule 1 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.
 - **Any shortfall in the second adult rebate element of a person's CTB:** this is to ensure that DHPs are not made in cases when a person is not entitled to CTB in their own right, but is getting a second adult rebate. In such cases DHPs cannot meet any shortfall between the second adult rebate and the council tax liability, because the second adult rebate relates to the circumstances of the other person in the household and not the claimant themselves.
 - **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, or
 - any restriction in benefit due to a breach of a community service order

continued

Appendix B

- **Benefit suspensions:** HB or CTB 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.
- **Rent, when the person is getting CTB but not HB (and vice versa in relation to Council Tax):** in other words, when a person is only getting HB, you should not take into account any financial assistance that they may require with their Council Tax, when considering the award of a DHP. Similarly, where the person is entitled to CTB but not HB, you should not take into account any liability to make rent payments.
- **Shortfalls caused by HB/CTB overpayment recovery:** when recovery of an HB/CTB overpayment is taking place, such shortfalls should not be considered for a DHP.