

Customer and Exchequer Service

Discretionary Housing Payment Policy

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Discretionary Housing Payment Policy

1. Introduction

The Child Support, Pensions and Social Security Act 2000 allows local authorities to give discretionary payments to customers who are entitled to housing benefit or council tax benefit if they need more help with their housing costs.

The act provides a framework for the new arrangements set out in The Discretionary Financial Assistance Regulations 2001. Payments made under these regulations are known as discretionary housing payments (DHPs)

Discretionary Housing Payments (DHP's) are cash limited. The DWP provides an annual grant. Funding or DHP is therefore limited to the grant provided by government (notwithstanding that the Kirklees overall financial limit is 2.5 x the Government grant contribution). Officers will need to have regard for the council's financial funding limit when considering applications.

2. Wednesbury Reasonableness

When a local authority uses its discretion, it must have made its decision in a rational way. Therefore any decision we make in regards to a DHP payment must follow the principles of "Wednesbury Reasonableness" The definition was given by Lord Greene in the Wednesbury case (1948 1 KB 223)

3. Claims for DHP

- 3.1 Claims must be made in writing on a DHP claim form.
- 3.2 If a customer makes a claim by any other method we will record that as the date of first contact. We will then issue a claim form to the customer which must be completed within one calendar month of the date of issue. If the form is completed within one calendar month of its issue we will count it as being received on the date of first contact.
- 3.3 If a customer makes a claim for a past period (backdating) *see section 5*

4. Qualifying Criteria

This assessment is designed to identify and help customers in severe hardship and or who would encounter hardship without additional financial support.

In determining if financial support is required account should be taken of the customer's current situation and the likelihood of their financial position or health position improving.

Part of the assessment will take the form of a means test to establish the degree to which support is required.

In the interests of Wednesbury Reasonableness the following is a list of issues which should be seen as a guide by the decision maker to the type of issues they should consider when reaching their decision. It is not, however, intended to be an exhaustive list.

4.1 Overview

- a) DHP is targeted assistance to households with a financial need or multiple and serious financial difficulties
- b) Any decision will be considered alongside the authority's Local Welfare Provision policy, and payment in kind for food etc. can be considered in order to free up disposable income to meet the ongoing liability or debt.

4.2 Initial considerations

- a) The DWP provide the "Discretionary Housing Payments Guidance Manual":- Including [Local Authority Good Practice Guide](#), which covers what is meant by 'further financial assistance'
 - i. Section 1.15 of the guidance confirms there is no definition of the phrase 'further financial assistance' in law. It is therefore, for each Local Authority to decide how this is interpreted. However, in most cases a claimant will need to demonstrate that they are unable to meet housing costs from their available income or that they have a shortfall as a result of the welfare reforms.
 - ii. Section 1.16 - How LA's determine this is for each Council, taking into consideration the claimant's financial circumstances and any other relevant factors.
 - iii. Section 1.17 - of the guidance confirms that the level of payment may cover all or part of a shortfall in rent or assist with the cost of taking up a tenancy.
- b) We aim to use DHP's to provide targeted assistance to tenants of social housing where they occupy an adapted property that meets the needs of a disabled person.
- c) We will consider use of DHP's to assist those who have health problems, thus restricting the choice of housing available.
- d) We aim to use DHP payments to provide targeted assistance to families where no alternative cheaper accommodation is available, in particular large families who are no longer entitled to the 5 bedroom LHA rate.
- e) We aim to use DHP payments to provide assistance to tenants subject to size restrictions, who have shared care arrangements/joint residency orders for children, who for housing benefit purposes are not included in their household, and who are facing hardship.
- f) We aim to use DHP payments to provide assistance to tenants who are moving to more affordable accommodation by meeting some or all of the removal costs.

- g) We aim to use DHP payments to provide assistance to tenants who move to more affordable accommodation by helping to meet rent in advance schemes.
- h) We aim to work with KNH and Registered Social Housing Landlords (RSL) by using DHP payments to provide one off payments to help tenants move between KNH properties and other RSL's
- i) We may consider the use of DHP payments to clear some or all of the tenants rent arrears but only if this will facilitate the tenant moving to cheaper more affordable accommodation..
- j) We aim to use DHP payments to provide targeted assistance to tenants where they are a foster carer and ordinarily paid an allowance by the authority for providing foster care, but for the time being there are no foster children in their care. We may also provide assistance to prospective foster carers where they going through an assessment process and are yet to have any foster children in their care.
- k) A customer may move house knowing that the rent is more than the LHA entitlement rate, or to a property where the rent is higher than their previous property. A DHP will not be awarded in these cases. Unless there are exceptional circumstances i.e. fleeing domestic violence, or severe health reasons
- l) If the customer is applying for a DHP because they are in a multiple debt situation, a DHP may be awarded once the customer has attended a meeting with a debt advice professional such as the Citizens Advice Bureau. The authority will help in making an appointment.

4.3 Rent arrears

- a) Is there a genuine risk of *imminent* eviction if the shortfall is not met? What evidence is there?
- b) Should the customer have realised benefit would be restricted before taking over the tenancy, e.g. did they check LHA rates, and has benefit been restricted at previous address?
- c) What steps has the customer taken to find cheaper accommodation?
- d) If the customer previously lived in accommodation where housing benefit would not be restricted, could s/he move back into the property? If not, why?
- e) Is it possible for the customer to move to cheaper accommodation? This might include living with friends or relatives or sharing
- f) Has the customer tried to negotiate a rent reduction with the landlord? If so, what was the outcome?
- g) Would the customer have a statutory right to be re-housed by the local authority if they were evicted?
- h) Is the tenant is making a contribution and payments to any rental shortfall?
- i) Is the customer taking reasonable steps to find suitable alternative property?

4.4 Income and capital

- a) Is any of the disregarded income to meet specific needs? Are those needs identified in the expenditure side of the equation and should they too be disregarded?
- b) DLA for mobility should not be taken into account as income in the assessment, if there is such a disregard, any expenses attributable to additional mobility needs should also be disregarded.
- c) Are there any non-dependants in the household who could provide (extra) help with the rent?
- d) Does the customer or partner have any capital (including disregarded capital), if so, how much?
- e) Does the customer or partner have any disregarded income? If so, how much?

4.5 Exceptional circumstances

- a) Would anything make it difficult for the customer to look for, or secure, cheaper accommodation? This might include factors such as the customer's age and health.
- b) Has the property been adapted to cater for a disabled customer's needs, or the needs of a family member who is disabled? If so, what adaptations have been made, why are they necessary, what would be the consequences for the customer or family member of living in an unadapted property?
- c) Does the customer, or any family member, have health problems which would be made worse by moving to alternative accommodation? If so, what?
- d) Does the customer have other exceptional outgoings which would make it particularly difficult for them to make up the shortfall? What evidence is there?
- e) Is the shortfall due to a non-dependant deduction? And is the customer asserting some exceptional circumstance which means that the non-dependant is unable/ unwilling to contribute towards rent/council tax and it is reasonable in the circumstances to make a DHP.
- f) Would the shortfall have particular effects on family members, especially any dependent children? If so, what?
- g) Has the customer suffered some recent event which threatens their ability to make ongoing payments of rent for example a burglary or other crisis for which they were not insured?
- h) Is it possible for the customer to find alternative accommodation to house the family and be affordable now that the 5 bed LHA rate has been removed? Do the non-dependants provide care for other family members?

There may be additional factors that need to be considered in individual cases. If so, the decision maker should obtain full details from the customer. They will then have to decide whether or not to make a discretionary payment.

The decision maker must be satisfied that the customer or family member will suffer if a DHP is not made. It is not enough to decide that a risk of suffering exists.

5. Limits on Payments

5.1 A DHP may be awarded for up to 6 months (i.e. between 1, - 6 months depending on the customers circumstances on a case by case basis.

5.2 Consideration to extend between 6 - 12 month awards must be authorised by a team manager.

5.2.1 In exceptional circumstances where it is clear that the customers circumstances will remain the same or are likely to remain the same then the award can run for a full financial year (12 month), Payments may also continue in future years, subject to annual review.

5.2.2 In cases where some degree of permanency exist in the customers circumstances the award can be extended e.g. the property has been adapted to cater for a disabled customer's needs, or the needs of a family member who is disabled.

5.2.3 For circumstances in 5.2.2 *there may be no reason for considering any other criteria or conditionality when making the award .i.e. choose and move.*

5.3 We will notify decision makers how much money is available for DHPs on a regular basis. This is to make sure that the DHP fund is not over allocated and consideration can be given to the need to make future payments.

5.4 If a customer makes a claim for a past period (backdating) and has continuous good cause for their failure to make a claim earlier, their claim in respect of that period shall be treated as made on -

(a) the first day from which they had continuous good cause; or
the day 6 months before the date of the claim for backdating if the customer is of working age, 3 months for customers of pension age, whichever fell later

Where a decision is reviewed backdating may be considered for a longer period, all these cases should be approved by the policy officer

5.5 If we receive a DHP claim within one calendar month of any entitlement to housing benefit or council tax benefit letter being issued, the DHP will start from the same date as the entitlement date on that letter.

- 5.6 We can consider a one off lump sum payment. We may decide to do this if we think it will reduce the customer's outgoings in the long run so that they can make up any shortfall in rent by themselves.
- 5.7 Payment will be made by BACS or by credit to a rent account or council tax account or can be made to landlord to reduce rent arrears. The payments will usually be made at the same time as housing benefit payments, except in cases where there is a lump sum award or a credit is made to a council tax account.
- 5.8 We will decide who to make DHP payments to, by giving consideration to who receives the housing benefit payments, the level of rent arrears and any other information given on the application form. Where rent arrears exist we use a facility to pay the landlord directly under housing benefit provisions. We will echo this when making payments under the DHP scheme.
- 5.9 As this is a discretionary service NO right of appeal exists. However, applicants or their authorised representative can request that the decision under the scheme be reviewed.

6. Overpayment

- 6.1 We cannot recover DHP overpayments from payments of housing benefit or council tax benefit. They can be recovered by debit to rent accounts, council tax accounts and sundry debt as appropriate.
- 6.2 DHP overpayments can be written off in accordance with the authority's financial regulation 10.8.

7. Notification

- 7.1 We will write to the customer to tell them whether their DHP claim was successful. The letter must include:
- the date the award runs from and to
 - the amount of the award
 - reasons why the claim was successful or unsuccessful

The Discretionary Financial Assistance Regulations 2001

This part summarizes the regulations. It is not an authoritative statement of the law.

Regulation 1

Makes general provision relating to the citation and commencement of these regulations.

Regulation 2(1)

Gives authorities discretion to make DHPs to a person entitled to housing benefit (HB), council tax benefit (CTB) or to both. The DHP will be made if, in the opinion of the authority, the customer needs further financial help (in addition to their benefit) to help with their housing costs.

Regulation 2(2)

Gives authorities discretion on whether to make a DHP in a particular case, and on the amount and the period over which it is paid. This provision gives authorities the discretion to decide the start and end dates of entitlement, both on initial claim and on review, whether to backdate, and the method and frequency of payment.

Regulation 2(3)

Ensures that any housing costs or council tax liability which falls to be paid before 02 July 2001 are not taken into account in the consideration of whether a DHP should be paid.

Regulation 3

This regulation prescribes the circumstances in which DHPs may be made, ie. That a claim has been made and the need for financial assistance does not arise as a result of specified liabilities or needs. These are:-

- (a) Ineligible service charges as specified in Schedule 1 to the Housing Benefit (General) Regulations 1987;
- (b) Charges for water, sewerage or allied environmental services;
- (c) Where the person is entitled to HB, but not CTB, the liability to make council tax payments;
- (d) Where the person is entitled to CTB, but not HB, the liability to make rent payments in respect of housing costs referred to in Regulation 10 of the Housing Benefit (General) Regulations 1987;
- (e) Liability to meet council tax where alternative maximum CTB ("second adult rebate") is payable;
- (f) Increases in rent due to outstanding rent arrears;
- (g) A reduction in benefit due to a Reduced Benefit Direction for failure to comply with the Child Support Agency in arranging maintenance;
- (h) A reduction in benefit (both in respect of HB/CTB and any other benefit) as a result of non-attendance at a work-focussed interview (i.e. a ONE sanction);
- (i) An amount of benefit suspended, both in relation to HB/CTB and any other benefit;
- (j) A restriction of benefit under community sentence sanctions.

Regulation 4

Provides for a limit on the weekly amount of a DHP.

- a) Where the DHP is made as a consequence of the need for financial assistance with rent the DHP must not exceed the weekly eligible rent.
- b) Where the DHP is made because of the need for financial assistance with council tax, the DHP must not exceed the weekly council tax.

Regulation 5

This gives the authority the discretion to restrict the period over which it makes a discretionary housing payment if it sees fit to do so

Regulation 6(1)

Allows authorities to accept claims for DHPs and decide the form and manner of the claims process. So authorities can choose whether to take claims in writing or by another method (e.g. electronic means, telephone), how much information to include on the claim form, what the claim form should look like etc. This regulation also allows a person entitled to HB or CTB or any other person acting on the customer's behalf to make the claim if the authority accept that as reasonable.

Regulation 6(2)

Allows authorities to make payment to the customer or another person (e.g. a landlord, or local authority in the case of rent rebates) if they consider it reasonable to do so.

Regulation 6(3)

Imposes a duty to notify customers of decisions (be they initial decisions or on review), in writing, with reasons, as soon as reasonably practicable.

Regulation 7

Makes provision requiring a customer to give the relevant authority such information as they may require to decide or review the claim, and tell the authority of any changes of circumstances that may be relevant to the continuance of DHPs. As the manner of provision of this information is not specified, it can be in any manner that the authority may require, e.g. writing, telephone, electronic means.

Regulation 8

Enables the authority to review any decision that it has made with respect to DHPs either of its own volition or as the result of an appeal, which could result in the award or cancellation of an award.

This regulation also enables the cancelling of DHPs where the person had misrepresented or failed to disclose a material fact or where there has been an error.

Authorities are charged with making their own arrangements for the recovery or otherwise of any overpayment.

Authorities are charged with making decisions as to the time and manner in which appeals must be made and the persons or persons that will consider any such appeal.