

Royal Borough of Windsor and Maidenhead

Discretionary Housing Payments Policy

2017

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Overview

DHPs provide customers with further financial assistance, in addition to any welfare benefits, when a Local Authority considers that help with housing costs is required.

The regulations covering DHPs are The Discretionary Financial Assistance Regulations 2001 referred to in this document as 'the regulations.' Although the legislation allows a very broad discretion, decisions must be made in accordance with ordinary principles about good decision making, i.e. administrative law. In particular, local authorities have a duty to act fairly, reasonably and consistently.

Housing costs are not defined in the regulations and thus gives a broad discretion to interpret the term which for the purpose of RBWM's policy includes:

rent in advance
deposits
other lump sum costs associated with a housing need such as removal costs.

The level of award may cover all or part of a shortfall in rent or assist with the cost of taking up a tenancy.

Once the overall cash limit has been met, no more DHP can be awarded. The limit is two and a half times the government contribution. The legislation which specifies the overall limit on expenditure is Article 7 of The Discretionary Housing Payment (Grants) Order 2001. Any unspent DHP funding will have to be returned to DWP at the end of the financial year. The amount of money left from the government contribution should not be a factor in the decision making. Although each case should always be decided on its own merits rather than on a set of rigid pre-defined criteria, decision making should be consistent throughout the year and this policy acts as a guide. The key objectives upon which our DHP policy is based are:

- 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 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, or
- promoting good educational outcomes for children and young people

Eligibility

Before an award is considered, the following initial eligibility criteria must **all** be satisfied:

customer entitled to Housing Benefit (HB); or Universal Credit (UC);
customer has a rental liability;
customer requires further financial assistance with housing costs.

A customer who is receiving local council tax support only, with no rental liability (e.g. an owner occupier) is not eligible to apply for a DHP.

Shortfalls

DHP's can cover:

- reductions in HB or UC where the benefit cap has been applied
- reductions in HB or UC for under-occupation in the social rented sector
- reductions in HB or UC as a result of local housing allowance restrictions
- rent shortfall to prevent a household becoming homeless whilst the housing authority explores alternative options
- rent officer restrictions such as local reference rent or shared room rate
- non dependant deductions
- income tapers

Lump sums

These can be awarded for a rent deposit or rent in advance scheme for a property that the customer is yet to move into if they are already entitled to HB or UC at their present home. The regulations are wide enough to permit this on the basis of a customer's entitlement to one of the eligible benefits at their current home. The regulations do not stipulate that the housing costs to which the DHP relates have to be housing costs relating to the property for which benefit has been awarded. .

Using DHPs for this purpose may be particularly appropriate to help existing customers move to alternative accommodation where their award of HB has been restricted following one of the welfare reforms. It may also be appropriate to consider using DHPs for this purpose where the RBWM rent deposit scheme is limited or exhausted

As a lump sum payment for rent in advance is not made in respect of a period, it is not imperative that the customer is entitled to HB other than at the point the award is made.

If the customer is currently in receipt of HB or UC within the Royal Borough, rent in advance can still be paid for a property outside of the Borough.

Before awarding a DHP for rent in advance or a deposit the following should be established:-

- is the customer due to have a deposit or rent in advance in respect of their existing tenancy returned to them
- Has the customer received assistance from the LA through a rent deposit guarantee scheme or similar

DHP's and two homes

The regulations do not prevent awards of DHPs on two homes when someone is treated as temporarily absent from their main home, for example because of domestic violence. In such cases, if the customer is treated as liable for rent on both properties, and in both cases there is a shortfall, a DHP could be awarded in respect of both properties subject to the weekly limit on each property.

If the customer is only treated as liable for payments on one dwelling but is having to pay rent on two, for example they are temporarily absent from their normal dwelling to stay near a child receiving treatment in hospital, a weekly DHP could be made to assist with the temporary accommodation up to the level of the weekly eligible rent on the dwelling from which they are temporarily absent.

What DHP's cannot cover

- ineligible service charges
- increases in rent due to outstanding rent arrears
- Sanctions and reductions in any benefit
- Benefit suspensions
- When the person is receiving council tax support but not HB or help with housing costs in UC
- Shortfalls caused by HB overpayment recovery

Level of DHP

If the DHP is being considered to meet a shortfall, it is at the discretion of the decision maker how much of that shortfall is to be met, as long as it does not exceed the weekly eligible rent on the home. 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, i.e. deductions in respect of certain specified service charges

For lump sum payments such as deposits or rent in advance this limit does not apply but regard should be given to the overall DHP budget. When awarding DHPs for a rent deposit or rent in advance, it is also necessary to consider whether or not the property is affordable for the tenant.

From April 2013 DHPs have been extended to people receiving Universal Credit providing they have a rental liability and are eligible for support towards housing costs (if a person is eligible for housing support towards rental liability the end award will always include an element towards housing costs). Following the introduction of UC, LAs will have to consider claims from customers who are not receiving HB. Customers receiving UC will not receive a specific amount towards housing costs therefore it is for the authority to decide on the amount of DHP to award, providing it does not exceed the weekly eligible rent.

Claims for DHP

The regulations require that there must be a claim for DHP before the an award can be considered. Claims will be accepted in the following format:

- On a written RBWM DHP application form
- On an electronic RBWM DHP application form
- In writing*
- Via email*

*Where applications are accepted in a format other than the RBWM DHP application form, additional information may need to be requested if there is insufficient information on the letter/email. The date of application will be the date the letter/email was received.

Applications do not necessarily have to be made on the RBWM DHP application form but in the interests of consistency, claims must only be considered where the applicant has provided:

- All information required to make a decision or look at a decision again
- any other information that may be required in connection with their claim.

Who can claim

In most cases, the person who claims a DHP will be the person entitled to HB or UC. Claims will also be accepted from someone acting on behalf of the person concerned, such as an appointee or advocate if the person is vulnerable and requires support.

Who can be paid

DHPs may be paid to someone other than the customer if it is considered reasonable to do so. For example, an agent, an appointee or a landlord.

When making a DHP to assist the customer with securing a new tenancy consideration should be given to making the payment to the landlord rather than the customer.

Deciding the DHP

Given the numbers of people affected by welfare reform changes, awarding DHPs to meet all shortfalls is not a viable option. Therefore priority groups are identified and funding loosely targeted accordingly, whilst always considering each case on its own individual merits.

The DWP have increased their funding from April 2013 with the intention of assisting those affected from April 2013 by welfare changes. The funding has been targeted to these changes as follows:

Baseline (RO restrictions, Non-dep deductions, Income taper):- £18m

LHA Reforms:- £27m

Social Size Criteria:- £54m

Cap:- £67.5m

The level of funding is reviewed each year by the DWP.

Priority is given to the following groups (list not exhaustive):

- Individuals or families fleeing domestic violence
- Those with kinship care responsibilities
- families with children at a critical point in their education;
- young people leaving local authority care;
- 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;
- where someone in the household is expecting a baby
- 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 due to, for example, a medical condition or where a child has a particular disability that might mean they are unable to share a bedroom;
- 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. In this respect you may also consider families who have a child with a disability who rely heavily on local support networks
- households with disabled members 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;

In the process of assessing an award of DHP, consideration should also be given to the attempts that may or may not have been made by the applicant to improve their financial circumstances or the possibility of them obtaining more suitable/affordable accommodation. The following questions should be asked:

The tenancy

- is there scope for the landlord to reduce the rent?
- can the tenant leave the tenancy without incurring a financial penalty?
- could the tenant afford the tenancy before they took it on?
- could a DHP enable the accommodation to become affordable in the interim, allowing the tenant time to find alternative accommodation?

The household's financial circumstances

- Does the customer have other debts to pay?
- Have they sought advice on how to clear their debts?
- 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)?
- Is there anyone else who can assist them with the shortfall/costs?
- Is the customer taking long-term action to help their problems in meeting their housing costs?
- Can the customer increase his hours or do any overtime?
- Is the customer in work but with high travel costs, because of split shifts for example?

The household's medical circumstances

- 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?

Other circumstances

- There may be other circumstances applying to the customer or a member of their household which you think need to be taken into account:
- 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?

Foster Carers & Adult Children in Armed Forces

Under changes in effect from April 2013, people who are approved foster carers will be allowed one additional room, where they are deemed to be under-occupying their accommodation because they have rooms required by foster children. This applies whether or not a child has been placed with them or they are between placements, so long as they have fostered a child, or become an approved foster carer in the last 12 months. In these cases, the room restriction will not apply and therefore DHP will not be applicable. Prospective foster carers going through the approval process to become foster carers who may need to show that they have a spare room to be approved.

Adult children who are in the Armed Forces but who continue to live with parents will be treated as continuing to live at home, even when deployed on operations. This means that the size criteria rules will not be applied to the room normally occupied by the member of the Armed Forces if they intend to return home. In addition Housing Benefit recipients will not be subject to a non-dependent deduction, i.e. the amount that those who are working are expected to contribute to the household expenses, until an adult child returns home. In this cases also, DHP is not applicable as a shortfall between maximum rent and HB for these reasons, should not be present.

Treatment of income and expenditure in assessment:

- The same disregards that are applied to an assessment for HB or CTS are applied when calculating the total household income for the purposes of a DHP assessment.

Consultation

Consultation with other RBWM departments may be required when the applicant has indicated that special circumstances apply which are particularly relevant to their DHP application. A representative from Children's Services and a representative from Housing Options will be available and should be consulted in these instances to verify the information provided on the applications. They may also be required to offer appropriate advice and assistance to the applicant, perhaps as an alternative to a DHP or to assist with any condition the DHP award is made with.

Notification

The applicant must be notified of the DHP decision in writing and with reasons, as soon as is reasonably practicable.

The notification should include information about the process for reviewing the decision that is in place. This should clearly distinguish the dispute/appeal rights that apply to HB and UC. It is important that customers are not inadvertently led to believe that such appeal rights also apply to DHPs. As DHPs are discretionary arrangements, there are no appeal rights to a Social Security Tribunal, although the route of Judicial Review is available, see Disputes and Appeals later in the policy.

There is no legal requirement to notify landlords of a DHP decision, but if this is deemed appropriate or necessary, this should be done without breaching our obligations of confidentiality owed to the claimant under data protection law.

If HB is already payable to the landlord and subsequently will also pay DHP to the landlord, the landlord should be notified that the DHP is also being paid directly to them. This may equally apply where a person is getting UC and some element of that is being paid to the landlord in respect of housing costs.

Where you have made a decision on the award customers will need the following information:

- 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;
- their dispute rights;
- information on who to contact if they need further help or advice

Backdating a DHP

Each claim should be assessed on its own merits when deciding whether or not to backdate a DHP. There are no rules on backdating but you do have a duty to act consistently. The Regulations were amended from 7 April 2008 to make it clear that a DHP can only be considered for a period where the linked HB is payable. This is of particular relevance to requests for a period of backdated DHP. Additionally a DHP cannot be awarded in respect of a period before 2 July 2001.

Length of DHP

The regulations do not limit to the length of time over which a DHP may be made and it is within the nature of the scheme to leave duration to the deciding authority. It may be awarded for a short period of time to give a customer time to sort out their financial circumstances or for an indefinite period until the claimant's circumstances change, particularly if they are trying to find alternative accommodation.

The award notification should make it clear what the period of the award is. If the purpose of the award is to meet a one off housing need such as a deposit or rent in advance, there is no requirement to specify the period of the award.

Temporary Accommodation

The length of the award of DHP which is paid in respect of top-up for homeless claimants placed in temporary accommodation will be limited to a maximum of 6 weeks. This is the length of time that Housing Policy have as their target for placing a homeless family in permanent accommodation.

Payment Frequency

Payments to meet shortfalls will be made at the same frequency and on the same dates as the HB or UC payment.

Change of circumstances

A customer receiving DHPs is required to notify the Local Authority of any changes of circumstances which may be relevant to their continuing to get DHPs. The customer should be made aware of the changes they should report. The Regulations do not stipulate a timescale for notification but within this policy, changes in circumstance are treated for the purposes of the DHP award the same as they are for Housing Benefit.

- Changes that are advantageous to the customer, reported within one month of the change are applied from the Monday following the date of the change.
- Changes that are advantageous to the customer that are reported outside of one month of the change, are applied to the award from the Monday following the date the change was reported.

- Changes that are disadvantageous to the customer are applied from the Monday following the date the change took effect, regardless of when the change was reported.

When a change of circumstances means that an award of HB or UC is reviewed, the DHP award should be reviewed at the same time if the change of circumstances means that the criteria for DHP are no longer met or the amount of the DHP award could change.

Ending DHP

You can stop making any further DHPs within the period of the award:

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

Overpaid DHP

You can recover DHPs if you decide that payment has been made as a result of misrepresentation or failure to disclose a material fact, either fraudulently or otherwise. You may also recover DHPs if you decide they have been paid as a result of an error made when the claim was determined.

DHP overpayments cannot be recovered from ongoing HB or UC. This is unlike HB overpayments where there is a regulatory provision to allow recovery from ongoing HB. There is also no provision for recovery of overpaid DHPs 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. This currently is in the form of an invoice raised on Academy. For further details of steps taken to recover DHP overpayments, refer to the RBWM Debt Recovery Policy.

Appeals

Decisions on DHPs cannot be appealed to a Social Security 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.

If a customer does not agree with the decision relating to the DHP award they can appeal that decision. This should be done in writing, preferably within one month of the date of notification of that decision. The appeal should contain details of the reasons why the customer feels the decision is wrong and ideally should be accompanied by any relevant supporting evidence. Appeals may be accepted after this one month limit if the customer can provide sufficient reasons as to why they have delayed submitting it, again with supporting evidence if appropriate. If the delay is considered reasonable then the appeal will be accepted.

The first stage in this process is for the decision to be looked at again, wherever possible by someone other than the original decision maker. If the decision can be changed then the customer should be notified of the outcome as soon as possible.

If the decision cannot be changed and the customer remains dissatisfied the second stage would be for the matter to be considered by the Head of Service.

Funding

The Discretionary Housing Payments (Grants) Order 2001 requires LAs to submit a DHP claim form providing details of DHP expenditure. This request occurs twice a year – 1 September and 30 April. LAs are requested to complete and return the form to DWP accounting services. The claim form must be signed by the Responsible Finance Officer within the LA (pursuant to S.151 of the Local Government Act 1972 or S.95 of the Local

Government (Scotland) Act 1973 as appropriate). Due to the increase in DHP funding the Department has strengthened its assurance arrangements by including a few more requirements in the local authority certificate to be signed off. In addition to providing details of DHP expenditure, the Responsible Finance Officer must certify that all entries on the claim form are accurate and expenditure has been made in accordance with this guidance and the regulations governing DHPs.