

Further guidance and legal advice for the administration of the Discretionary Housing Payment (DHP) Scheme

- 1.1 A DHP can be paid when the council is satisfied that the claimant is entitled to:
 - Housing Benefit (HB); **or**
 - Universal Credit (UC) that includes a housing element towards rental liability; **and**
 - requires further financial assistance with housing costs.
- 1.2 The Department for Work and Pensions (DWP) provide substantial guidance in their DHP Guidance Manual setting out how Local Authorities can define these terms and in what circumstances it may be appropriate to make payments. However, the guidance manual itself is clear that fundamentally decisions are the responsibility of councils.
- 1.3 The good practice guide is intended to act as aid; however, Local Authorities have overall responsibility for how DHPs are administered and paid, taking into account the impact of Welfare Reform and any other relevant factors. Due to the discretionary nature of the scheme it is important that Local Authorities are flexible in their decision making. (DWP Discretionary Housing Payment Guidance Manual April 2013 1.4)
- 1.4 The regulations state that DHP can be used to meeting 'housing costs'. This term is defined in the DWP guidance manual as meaning:
 - Current rental liability; and more widely:
 - Rent in Advance
 - Deposits
 - Other lump sum costs associated with a housing need such as removal costs.
- 1.5 The DWP guidance manual also states DHP may not be used for:
 - Ineligible services
 - Increases in rent due to outstanding arrears
 - Sanctions and reductions in benefit
 - Benefit suspensions
 - Shortfalls caused by overpayment recovery
- 1.6 The legal powers are contained in the Discretionary Financial Assistance Regulations 2001 (Statutory Instrument 2001/1167). In short the regulations make provision that the Local Authority may make payment of DHP where a person *'appear to such an authority to require some further financial assistance (in addition to the benefit to which they are entitled) in order to meet housing costs'*.
- 1.7 The DWP has recently issued new DHP guidance to reflect amendments to the Discretionary Financial Assistance regulations to ensure the scheme covers the introduction of UC and abolition of Council Tax Benefit from April 2013. This includes guidance to Local Authorities on how DHPs can be used to provide support to customers affected key Welfare Reforms; namely the introduction of the Benefit Cap, introduction of the Social Sector Size Criteria and reductions in Local Housing Allowance.

- 1.8 Funding of £30 million in total (20% of the national fund) was originally made available to Local Authorities for this financial year and next, aimed specifically at under-occupation in two groups, namely disabled people living in accommodation that has had significant adaptations carried out to meet their needs and foster carers. The government have recently stated that foster carers will now be exempt from the changes provided that they are only under-occupying by one room. But, under-occupying by more than one room will attract a reduction in benefit. It is our understanding that a proportion of our allocated £1m funding will be now be reclaimed nationally to reflect this policy change.
- 1.9 Funding of up to £75 million this year (50% of the national pot) has been set aside to deal with the affects of the Benefit Cap, this amount will be reduced to £45 million in the year 2014/15. The council's own analysis suggests that the Benefit Cap which is due to be rolled out between July and September 2013 is likely to cause the significant financial hardship on vulnerable households in the city, particularly those with children, and therefore this will be a priority area for support through the DHP, especially where those households are also being supported through the Stronger Families, Stronger Communities programme.
- 1.10 The DWP have stressed that the additional funding they have made available is not based on replacing lost benefits as a result of Welfare Reform as to do so would undermine the rationale of the reforms. The purpose of the additional resources is to enable LAs to assist those most affected to adjust to a long-term affordable solution. Statements from the government have defended accusations that the DHP fund is under resourced by arguing that they do not expect DHPs to be available to everyone who sees a reduction in their benefit.

Additional Legal comment

- 1.11 A wide range of issues should and can be taken into account when making decisions about whether a DHP should be made. DHP is a discretionary fund with a limited budget and as such it is imperative that each case is considered on its own merits and a decision made accordingly. An overly prescriptive approach could lead to a challenge that the council is fettering its discretion. Appendix 1 sets out the issues and scheme decision makers may take into account. Other circumstances not listed in appendix 1 could be considered as appropriate to make a payment of DHP against. Failure to treat each case on its merits might lead to challenge by way of Judicial review (the only remedy available). Clear audit trails should be recorded to justify each decision and the more unusual ones should have greater detail.

Simon Court, 1st April 2013