

# Erewash Borough Council - Discretionary Housing & Council Tax Payments Guidance

Updated April 2020

## Background

Housing Benefit Discretionary Housing Payments (DHP) is payable in addition to Housing Benefit and Universal Credit Housing Element where certain criteria are met. The DHP scheme is set out in the DFA regulations (S.I.2001/1167) as amended by the Council Tax Benefit Abolition (Consequential Provisions) Regulations 2013 (S.I. 2013/458), which came into force on 1 April 2013; and the Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013 (S.I. 2013/630), which came into force on 29 April 2013.

Although the regulations give Local Authorities broad discretion, decisions must be made in accordance with principles of good decision making and have a 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.

Following the abolition of Council Tax Benefit from April 2013, DHP can no longer be made towards Council Tax liability for customers in receipt of Council Tax Support. The Council Tax Discretionary Fund (DP) has been set up to replace this.

The objective of awarding Housing Benefit DHP and/or Council Tax Discretionary Payments (DP) is to:-

- Help claimants through difficult personal events;
- Offer temporary respite by granting additional financial assistance with housing costs and Council Tax liability.
- Homeless Reduction Act. The Council has a strong track record in utilising DHP to prevent homelessness, and has effective working arrangements between the Housing Options and Benefits services. Cases will be considered on a case by case basis where the applicant is working with the Authority to prevent their homelessness. Applicants must engage with any support offered such as debt advice, floating support etc.

In addition, Housing Benefit DHP can be used to provide support to customers affected by some of the key welfare reforms, including:

- introduction of the benefit cap;
- introduction of size criteria in social rented sector;
- reductions in local housing allowance.

## Financial Position

The Government allocates an overall cash limit that the Council can spend on Housing Benefit DHP.

The Council will set the overall cash limit in respect of Council Tax DP.

Once the Council has met the overall cash limit no more DHP can be awarded. The legislation which specifies the overall limit on Housing Benefit DHP expenditure is Article 7 of The Discretionary Housing Payment (Grants) Order 2001.

Any unspent Housing Benefit DHP funding will be returned to DWP at the end of the financial year.

### What are the criteria for an award?

Before the Council makes an award we must be satisfied that the customer is entitled to:

- Housing Benefit; **or**
- Council Tax Support; **or**
- Universal Credit Housing Element; **and**
- has a rental and/or Council Tax liability; **and**
- requires further financial assistance with housing costs and/or Council Tax payments

Housing costs are not defined in the regulations and this approach purposely allows broad discretion for interpretation. In general, 'housing costs' usually refers to rental liability, although the term can be interpreted more widely to include:

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

### What do we mean by 'further financial assistance'?

There is no definition of the phrase 'further financial assistance' in law. It is for the Council to interpret.

The Council may interpret the phrase however they wish, taking into consideration the claimant's financial circumstances and any other relevant factors. In most cases however, a customer will need to demonstrate they are unable to meet housing costs from their available income or that they have a shortfall in rent as a result of the welfare reforms.

The level of award may cover all or part of a shortfall or reduction.

### What types of shortfalls can be covered?

The various types of shortfalls Housing Benefits DHP can cover include:

- reductions in Housing Benefit or Universal Credit Housing Element where the benefit cap has been applied;

- reductions in Housing Benefit or Universal Credit Housing Element for under-occupation in the social rented sector;
- reductions in Housing Benefit or Universal Credit Housing Element as a result of Local Housing Allowance restrictions;
- rent shortfalls to prevent a household becoming homeless whilst the housing authority explores alternative options;
- income taper reduction.
- Any other policy change that limits the amount of HB payable, for example the removal of the family premium

Other circumstances could include:

- Rent in advance, Admin costs or Fees for none Registered Social Landlord tenants. In these cases it is important to establish if the rent is affordable without on-going need for DHP.
- Lump Sum to clear rent arrears. Cases will be considered on a case by case basis where the applicant is working with the Authority to prevent or relieve their homelessness. Applicants must engage with any support offered such as debt advice, floating support etc.
- Income less than expenses
- Carer needed. For example if someone is not in receipt of DLA (Care) Middle or Higher, PIP Daily Living or Attendance Allowance, but has medical needs which GP/Social Worker state requires over-night care.
- Property adapted for the use of a disabled person
- Exceptional Circumstances, for example Section 21 Notice Seeking Possession.
- Consideration to clear arrears if customer willing to downsize, and have no further requirement to DHP.
- Absent parents who, as a condition of access to children require suitable accommodation for them to stay over
- Cases where the customer needs to be rehoused for their safety and rent arrears are a barrier to them being rehoused.

Council Tax DP can cover:

- shortfall between the Council Tax liability and Council Tax Support
- income tapers
- arrears of Council Tax in exceptional circumstances where the applicant can demonstrate they do not have the ability to pay

### Housing Benefit DHP and two homes

The regulations allow the Council to award DHP on two homes when someone is treated as temporarily absent from their main home, for example because of domestic violence.

In this case, if the customer is treated as liable for rent on both properties, and in both cases there is a shortfall, they could have DHP 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 absent temporarily.

### What Housing Benefit DHP cannot cover

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

Excluded elements are:

- ineligible service charges;
- charges for water, sewerage and environmental services;
- increases in rent due to outstanding rent arrears;
- any reduction in benefit as a result of a sanction. DHP will be assessed using the unrestricted amount;

### The level of Discretionary Payments

The council, when making a decision on the award of a Housing Benefit DHP or Council Tax DP has complete discretion. It decides whether or not an award will be made, and to whom, the amount and for how long the assistance is awarded.

However, the regulations require that the level does not exceed;

- the weekly eligible rent in the case of an HB customer, or
- the amount calculated in accordance with Schedule 4 of the UC regulations (i.e. the value stated for housing costs on a UC award notice) in the case of a Universal Credit customer
- the weekly eligible Council Tax liability

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.

Following the introduction of Universal Credit, the council will consider claims from customers who are not receiving Housing Benefit. Customers receiving Universal Credit will not receive a specific amount towards housing costs therefore we can decide on the amount of DHP to award, providing it does not exceed the weekly eligible rent.

Upon application, customers who are owed a Homelessness Duty by the council and are subject to Single Room Rent will be considered for Housing Benefit DHP up to the level of their rent for a period of 13 weeks, depending on funds available.

When considering whether it is appropriate to award a DHP/DP, the Council prioritises the following (in no particular order):

- Families with Children at a critical point in their education
- Young People leaving local authority care
- Families with kinship care arrangements
- Families with children temporarily in care
- Families with Social Services intervention
- People who have had to flee domestic violence
- Households where someone is expecting a baby
- Ex-homeless people being supported
- People with health or medical problems that make it essential for them to remain in their current accommodation, and it would be detrimental to their condition if they were to move to other accommodation
- People with disabilities/requirement for storage of equipment for disability
- couples unable to share a bedroom due to disability/illness
- Households with disabled children
- The elderly or frail who have lived in the area a long time
- People who need to live near their place of work
- Where properties have been adapted for the disablement needs of a member of the household
- Recently made redundant to support back in to employment
- Applications from those who the council owes, or is likely to owe, a Homelessness Duty as defined in the Housing Act 1996 as amended by the Homelessness Act 2002.

Please note this list is not exhaustive. In considering specific cases the Council takes into account factors such as:

- Is there any genuine risk of eviction if additional help with housing costs is not provided?
- What other outgoings does the customer have which make it harder for them to meet their housing costs?
- What assets/savings does the customer have which might be used to help with their housing costs?
- Does the customer have access to other funds, including state benefits, as yet unclaimed?
- Does the customer have disregarded income that might be used?
- Is it possible for the customer to negotiate a rent reduction with the landlord?
- Could the customer relocate to alternative accommodation that would incur lower housing costs?
- Are there additional costs associated with any illness?
- Is the hardship having particular effects on individuals within the family, for instance young children?

- Are non-dependants living in the household contributing financially?
- Is there a risk of the customer being declared statutorily homeless if a payment is not made?
- The funds available in the DHP fund.

The Council reserves the right, when awarding Housing Benefit DHP, to advise customers to seek alternative accommodation if it feels that the current accommodation is inappropriate for their needs.

Applicants for DHP/DP will be expected to complete a financial information questionnaire detailing their personal budget and provide suitable proof of income, expenditure and assets. However there are exceptions detailed below;

- Where properties have been adapted for the disablement needs of a member of the household
- Rent in Advance, Admin costs or Fees. (Housing Options referral only)
- Additional room for a carer (where Disability Living Allowance Care, Attendance Allowance or PIP Living in not in payment)

The Council maintains that it is reasonable to look into customers spending patterns to establish if any hardship can be minimised, but recognises that the customer should not be expected to reduce expenditure on essentials, such as food, heating and lighting unless expenditure in these areas is unreasonably high.

It may be reasonable to expect the customer to cancel or reduce expenditure on **non-essential items**, such as mobile phones, cable/satellite television packages, cigarettes, entertainment and leisure activities, where the payment of their rent is deemed to be of a higher priority.

The council recognises the scheme is subject to internal and external audit, and will ensure there are clear systems in place to facilitate such processes.

## Benefit Cap

Customers subject to the Benefit Cap are eligible to make an application. Proof of expenses is not required, only a completed form. Entitlement will be awarded as follows;

75% of the Benefit Cap reduction will be paid for a period of 13 weeks on condition funds are available, money management advice is sought and the customer pays the shortfall to their Landlord. Referral will be made to the Money Advice Officer unless they are engaging with other providers.

50% of the Benefit Cap reduction will be paid for a period of 13 weeks if the above conditions have been adhered to and funds are available.

25% of the Benefit Cap reduction will be paid for a period of 13 weeks, again if the above conditions have been adhered to and funds are available.

Application may be made after these awards have been exhausted, but the calculation of entitlement will be made using income and essential expenditure.

### Who can claim DHP/DP

In order to be considered for Housing Benefit DHP a customer must be entitled to Housing Benefit or the Housing Element of Universal Credit. To be considered for Council Tax DP a customer must be receiving Council Tax Support. A claim will only be considered once a decision has been made on a customer's Housing Benefit, Council Tax Support or Universal Credit.

In most cases, the person who claims a DHP/DP will be the person entitled to Housing Benefit, Council Tax Support or the Housing Element of Universal Credit. However, the council will also accept claims from someone acting on behalf of the person concerned, such as an appointee or advocate if the person is vulnerable and requires support.

Housing Benefit DHP may be paid to someone other than the customer if the council consider it reasonable to do so. That could be an agent, an appointee or a landlord.

Council Tax DP will be credited directly to the Council Tax account.

### Information a customer must give

- Property adapted for the use of a disabled person – This is not a financial calculation. Completed application form is required and Visiting Officer will visit the property to establish whether the property has been significantly adapted. Annual renewal is carried out by mailshot to the customer asking them to contact office and declare if their circumstances have changed, i.e. disabled person still living in property, no form required to be completed.
- Carer needed (where Disability Living Allowance Care, Attendance Allowance or PIP Living in not in payment) – A completed application form is required, information and evidence of income and essential expenditure is not required. We will however require evidence from a GP/Social Worker the customer requires an over-night carer. Annual renewal is carried out to establish if their circumstances have changed, no review form required to be completed.
- Rent in advance – These are referrals made only from the Housing Options Team. A completed form is required, information and evidence of income and essential expenditure is not required.
- Exceptional Circumstances, for example Section 21 / Clear rent arrears. A completed form is required together with up-to-date proof of the rent account. A financial calculation may still be necessary to establish ability to pay the shortfall which has resulted in the arrears, and if this is the case further evidence will be requested.
- Benefit Cap (first 3 periods of entitlement), only a completed form is required. After this proof of all essential expenditure declared on form is required.
- All other applications proof of all essential expenses declared on form is required.

If a customer is receiving Housing Benefit and/or Council Tax Support, the council will already hold their income and rental liability. However if a customer is in receipt of Universal Credit, we will not necessarily hold details of their income or rental liability. However, data sharing powers introduced on 2 July 2012 should provide a gateway for the Council, but a request to the customer may need to be made.

Receipts for the payment of bills, invoices and demands are required if stated as an essential expense on the claim form. The bills alone are not sufficient, proof of payments being made is required.

## Backdating

Each request for backdating of a DHP/DP will be considered on its own merits when deciding whether or not to backdate, but it can only be considered for periods where the Housing Benefit or Council Tax Support was payable.

There are no rules on backdating, but we do have a duty to act consistently.

## Assessment

The assessment of all requests will be made taking account of allowable **essential** expenses and allowable income/benefits. The following benefits which will be disregarded from allowable income/benefits include:

- DLA Care component;
- DLA Mobility component. However all car expenses or transport costs will not be allowed as an expense;
- Attendance Allowance;
- Personal Independence Payments - Daily Living;
- Personal Independence Payments - Mobility. However all car expenses or transport costs will not be allowed as an expense

Applications for DHP will not be considered if the customer or partner has capital of **£1,000** or more.

To maintain consistency across all applications the following will be used in the assessment:

### **Expenses**

#### **Food/Housekeeping**

£48.00	Single
£70.00	Couple
£20.00	per child between the ages of 0-10 years
£30	per child between the ages of 11-18 years

### **Mobile Phone only**

£30 per month top-up

### **Telephone/Internet**

Restricted to £40 per month

### **TV Licence**

£157.50

### **Pets**

£25 per month

### **Non-Dependant Deductions**

A percentage reduction of utilities payments (1/3th for non-deps) will be made to cover their proportion of the utilities.

### **Loans/Finance/HP**

These are only taken into account if for the purchase of an essential item(s), then only the minimum payment will be used as an expense, this includes catalogue debts. Customer would be expected to seek assistance with the debts.

Therefore we will ask customers to provide evidence of what the loan was for.

### **Court Fines**

Not allowed

### **Alcohol/Tobacco**

Not allowed

### **Public Transport**

£10.00 per week unless working

If customer is working the location of their work will be taken into account.

If customer is in receipt of the Mobility component of Disability Living Allowance or PIP Mobility no expenses will be taken into account.

If customer or a member of their immediate family is ill or disabled and has to travel to hospital on a regular basis and not in receipt Mobility component of Disability Living Allowance or PIP Mobility, reasonable transport costs will be used.

## **Petrol**

£10.00 per week if not working.

If customer is in receipt of the Mobility component Disability Living Allowance or PIP Mobility no expenses will be taken into account.

If customer or a member of their immediate family is ill or disabled and has to travel to hospital on a regular basis and not in receipt Mobility component of Disability Living Allowance or PIP Mobility, reasonable transport costs will be used.

## **Length of award**

The intention of DHP is to provide temporary assistance.

Awards will be determined by the individual circumstances of a case.

It may be appropriate for the Council to make a short term award to give a customer time to sort out their financial or housing circumstances, particularly if they are trying to find alternative accommodation. If appropriate, when claiming a subsequent award the customer maybe asked what steps they have taken to seek cheaper alternative accommodation, seek help dealing with their debts/finances and/or gain employment. With under occupancy reductions, evidence of bidding on alternative accommodation may be requested and if not supplied DHP could be refused or reduced.

When there is a specific end date, the Council will make it clear to the customer what the period of the award is.

Awards cannot exceed the end of the financial year as funding is provided on a year by year basis.

## **Telling the customer of the decision**

If someone claims a DHP/DP, the Council will tell that person of the decision in writing and give reasons, as soon as is reasonably practicable. The Council will be consistent and avoid unnecessary delay.

Information about the process for reviewing the decision will be provided when issuing a decision.

As DHP/DP are discretionary arrangements, there are no appeal rights to a Social Security Tribunal.

There is no legal requirement to notify landlords of a Housing Benefit DHP decision. However, if the landlord is already being paid Housing Benefit they will be advised that the DHP will also be paid directly to them. This will apply equally where a person is getting Universal Credit and some element of that is being paid to the landlord in respect of housing costs.

## Change of circumstances

A customer receiving DHP/DP is required to notify the Council of any changes in their circumstances which may be relevant to continuing entitlement.

Customers have a duty to report change in their circumstances for Housing Benefit, Council Tax Support and Universal Credit purposes and these changes may also be relevant to continuing payment of DHP/DP. It is important customers report any changes of circumstances with one calendar month of the change.

Where an overpayment of a Housing Benefit DHP is identified, recovery will be sought from the person to whom it was paid. DHP overpayments cannot be recovered from on-going payments of Housing Benefit and a Sundry Debtor account will be raised.

Where an overpayment of a Council Tax DP is identified, the overpayment will be charged back to the Council Tax account.

A further award of DHP/DP will not be considered until all outstanding arrears have been recovered.

## Fraud and Error

If as part of the collection of information to determine a DHP/DP, the DHP Officer becomes aware of anything that may suggest that the Housing Benefit, Council Tax Support or Universal Credit claim is being paid incorrectly, the DHP Officer will refer the case to the Council's Benefit Enquiry Unit or if appropriate to the DWP's Fraud team.

## Dispute Procedures

The Council can review a DHP decision in the event of disputes.

However, decisions on DHP/DP cannot be appealed to a Social Security Tribunal as they are not empowered to deal with such awards.

Judicial review may be available if the process of dealing with a claim can be shown to be defective and the Local Government Ombudsman may consider an allegation of maladministration.

The Council will review a decision in the event of a dispute either at the time of the initial rejection or reduced award or subsequent to a cancellation or recovery.

The Council will notify the customer of a review outcome in writing, giving reasons as soon as is reasonably practical.