

LSA

Legal Services Agency

Doing the Right Thing,
the Right Way

Discretionary Housing Payments:

A Brief Guide



This leaflet contains advice on Discretionary Housing Payments (referred to as 'DHPs')

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About this leaflet

This leaflet is intended for claimants who wish a “briefing” on how they can get extra help with their housing costs. It will also be of assistance to non specialist advisors.

It comes out of the extensive work undertaken by Legal Services Agency, both in Glasgow and Inverclyde, in partnership with a range of advice agencies and CABx, as well as the relevant Local Authorities, in promoting awareness of Discretionary Housing Payments, particularly taking into account the impact of the bedroom tax.

The impact of the bedroom tax has been modified: through DHPs, hence the increased need for this booklet.

The booklet was piloted in electronic and photocopied form with hundreds of advice workers. Their input and comments were most appreciated. A more lengthy version of the booklet is available on LSA's website www.lsa.org.uk.

The booklet was written by Frank Jarvis, LSA solicitor, who has also lectured extensively on this area of social welfare law.

What are Discretionary Housing Payments (DHPs)?

DHPs are a form of financial assistance for tenants. They help meet rent charges and certain other housing costs. They are administered by Local Authorities and can be paid in addition to any other benefit which the claimant receives.

Because these payments are 'discretionary', the Local Authorities have the freedom and flexibility to decide exactly who gets an award, how much and for how long. The basic criteria are very broad and there are no detailed rules which set out how claims are decided, although the Department of Work and Pension has issued guidance which is referred to below.

Although DHPs were introduced several years ago, they have become more important in the context of the current UK government's Welfare Reform measures. In particular, the introduction of size criteria in the Social Rented sector (also known as the 'Bedroom Tax') on 1st April 2013 left many tenants facing a shortfall in their Housing Benefit. DHPs are an important tool in trying to deal with shortfalls caused by bedroom tax. However, not everyone affected by the bedroom tax will be eligible for DHPs (see 'Who can claim', page 5).

Partly as a response to criticism of the bedroom tax, the Government has increased the DHP budget considerably in recent years, with £155M made available for 2013–14. Political parties opposed to the bedroom tax continue to lobby for further increases and it is therefore likely that Discretionary Housing Payments will gain importance in the future.

The fund is budget limited and once the authority has reached its limit no further awards can be made. This combined with the broad flexibility enjoyed by the local authority in making or refusing awards, is likely to mean that awards are decided by reference to the level of funds remaining for a given financial period as much as they are determined by the merits of the application.

Who can claim?

To claim DHPs you must be

a) entitled to some Housing Benefit¹

AND

b) in need of further financial assistance towards housing costs.

'Housing costs' generally means rent but might also include rent paid in advance, deposits and other fixed housing costs such as removal costs.

'Further financial assistance' is not defined but the applicant will usually need to show that they can't meet the housing cost in question from their existing income.

This means that tenants receiving an award of housing benefit, which covers some of their rent, but are still struggling with a rent shortfall will be able to make a claim for DHPs.

Tenants receiving full housing benefit might be eligible to claim DHPs for additional housing costs over and above the rent. Typically, these will be costs associated with taking up a new tenancy (see 'What can you claim for', page 6).

There are certain shortfalls and charges which are specifically excluded (see 'What can't you claim for', page 7) and DHPs can no longer be awarded towards council tax liability.

¹ Following the introduction of Universal Credit, claimants who receive a payment that includes a housing element towards rent liability will also be eligible.

What can you claim for?

The general rule is that you can claim DHPs for a housing cost not met by an existing award of Housing Benefit.

This means that DHPs could cover shortfalls in Housing Benefit caused by (for example): –

- Bedroom Tax
- Benefit Cap
- For private tenants, restrictions in Local Housing Allowance
- Non-dependant deductions
- Increased income

You can also claim DHPs for a rent deposit, rent in advance or removal costs for a future home provided you are entitled to Housing Benefit for your present home. Local Authorities may consider the circumstances of the move and claimants facing particular difficulties including cuts to their benefits are likely to receive priority. You should also note that there are other sources of financial help for costs associated with a new tenancy; seek advice from a GAIN agency (see 'Where to go for help', page 17).

These are only examples and many other shortfalls and costs could potentially be the basis for a claim.

What can't you claim for?

There are some important exceptions to the general rule stated above. DHPs cannot cover shortfalls in Housing Benefit caused by:

- Recovery of past overpayment
- Benefit sanctions or suspensions

DHPs cannot be claimed for what are called 'ineligible charges'. These are generally charges in respect of day-to-day living expenses including things like meals, laundry, leisure items, cleaning and transport. Also excluded are costs associated with furniture, alarm systems, nursing or medical care.

How much will you receive?

If the award is to make up a rent shortfall, the local authority has absolute discretion in deciding how much to award, providing that the total amount of Housing Benefit and DHP combined does not exceed the weekly eligible rent. This means that it is for the Local Authority to determine the level of financial assistance which the claimant requires and make an appropriate award.

A claim will usually be on-going to a specified date, after which it is necessary to reapply. It is also possible for a claim to be backdated. Whereas claimants will usually need to show good cause for not claiming sooner, there is no such test for backdating DHPs. This means that the applicant should always request that DHPs are paid from the date they started to experience financial need, regardless of when they actually made the claim.

However, the backdate cannot go further back than the current award of Housing Benefit so a break in the linked Housing Benefit claim will prevent backdating.

If the award is to cover a one-off cost such as a rent deposit or rent in advance then these limits do not apply, and again the Local Authority has flexibility as to the level of the award.

How to make a successful claim

A claim does not necessarily need to be in writing although in practice most local authorities have a standard claim form which they will ask claimants to fill out.

Each Local Authority has its own claim process. Most use a claim form, though they may accept written applications in other formats. Some Local Authorities allow written applications to be submitted by email and some (including Glasgow City Council) will accept an application over the phone. This may be appropriate if a claimant has particular difficulty putting their claim in writing or needs to claim as a matter of urgency.

Generally, applicants should provide as much information to show financial need as possible. This will generally include details of income and expenditure, which the local authority will then use to determine what available income you have to meet housing costs.

Guidance issued by the Department of Work and Pensions suggests that local authorities should take into consideration

the purpose of the income so that (for instance) Disability Living Allowance (DLA) or Personal Independence Payments (PIP) are discounted as being allocated to the extra costs associated with the claimant's health problems. Not all Local Authorities have adopted this approach and claimants should consider challenging any decision which is based on a calculation which includes these payments as income (see 'what to do if your claim is refused', page 12).

Other details which might be relevant to showing financial need include:

- Household composition, any special requirement of the claimant or household members
- Personal debts (particularly including rent arrears and other priority debts),
- Health problems, serious or terminal illnesses, or other vulnerabilities such as addictions
- Exceptional circumstances such as bereavement or family crisis
- Homelessness or threatened homelessness
- Recent release from care/ prison
- Any specific reason why claimant needs to stay in house e.g. next to school, child sitting exams, local support services, disabled adaptations
- Vulnerable groups such as, foster carers, kinship, loan parents with shared custody,

-
- Employment problems, including Efforts to sustain or take up employment
 - Any steps taken to remedy situation, such as actions to reduce expenditure, trying to increase hours of work or seeking employment
 - Future change in circumstances that will help situation, such as a lodger joining the household or due a baby that will increase bedroom requirement, or financial circumstances will improve such as a loan repayment coming to an end

This is not an exhaustive list and the local authority may consider any matters which the claimant puts forward as demonstrating financial need.

You should also note that while the above may be relevant to a claim for DHP, these matters may also be relevant to entitlement to other benefits such as payments from the Scottish Welfare Fund. Please contact an advice agency for further details.

What to do if your claim is refused

The local authority should issue a written decision notice as soon as is reasonably practicable. Again, this does not always happen in practice and a failure to issue a decision notice may itself be a ground for challenge. A claimant may challenge the refusal of an award or, where an award is granted, they may challenge the amount or the duration of the award (including a refusal to backdate). The options for challenging a decision are set out below:

Review

Unlike most benefit claims, there is no automatic right to seek review although the Regulations stipulate that the Local Authority may review a decision in relation to DHPs, and some Local Authorities have a policy of considering review requests of unfavourable DHP decisions. It follows that applicants should seek review of any unsatisfactory decision. A review may provide an opportunity to provide significant new information.

There is no set form for seeking a review of a DHP decision and any one seeking a review should simply set out in writing the details of the decision and why they think the decision is wrong. Even if the authority declines to carry out a review, or confirms their original decision on review, such steps will assist in further challenges of the decision (see opposite).

There is no right of appeal to a Social Security Tribunal. Instead, the only means of having DHP decisions independently reviewed is by means of Judicial Review or Complaint to the local government ombudsman (The Scottish Public Services Ombudsman (SPSP)).

Judicial Review

Judicial Review is a form of legal proceedings in which a court reviews the legality of the local authorities' decision. An application for Judicial Review is made by means of Petition to the Court of Session in Edinburgh. It is a complex area of law and the review will only succeed if the local authority is found to have acted unlawfully. Applicants considering this option should consider instructing a solicitor in order to enhance their chances of success. Civil Legal Aid is potentially available, and most recipients of Housing Benefit (whether full or partial) will meet the Scottish Legal Aid Board's financial eligibility criteria.

There are various arguments which may be considered as part of a Judicial Review; these include situations in which:

a) The decision is contrary to specific statutory requirements

The local authority must fulfil any and all duties imposed on them by the relevant legislation but equally must not overstep the powers which the legislation provides.

b) The decision-maker has not exercised discretion properly

This might include a failure to take relevant matters into account or taking irrelevant matters into account, the breach of the applicant's legitimate expectations and other situations in which the decision is plainly unreasonable. There must be genuine exercise of discretion, as opposed to the application of rigid policies or mere 'rubber stamping' of a previous decision.

c) The decision-maker has not followed proper procedure

The local authority must follow any procedural requirements set out in the legislation, although as noted above the procedural requirements for determining DHP applications are minimal.

d) The decision is contrary to the applicant's Human Rights (as detailed in the European Convention on Human Rights ECHR)

Section 3 of the Human Rights Act 1998 imposes a duty on both courts and local authorities to read and apply legislation in a way which is compatible with Convention rights. The starting point of any challenge on human rights grounds is to identify which of the various rights protected by the Convention is threatened by the decision in question. Relevant extracts from the Convention are reproduced in Appendix 1.

Previously, benefit applicants have sought Judicial Review on grounds that the decision was discriminatory, and so breached their right not to be discriminated against as protected in Article 14 ECHR.² The starting point for this argument is to identify which protected 'status' the claimant enjoys. However, it is possible that a DHP decision might also interfere with other protected Human Rights, including Article 6 (Right to a fair Trial) and Article 8 (Right to respect for privacy and family life).

Challenges on Human Rights grounds are legally complex, potentially costly and face uncertain prospects of success. Seek legal advice from Legal Services Agency or another firm with expertise in Human Rights and Public Law at an early stage.

Complaint to Scottish Public Services Ombudsman

Where an applicant has suffered injustice or hardship as a result of poor administration or service failure by a local authority, the applicant may complain to the Scottish Public Services Ombudsman (SPSO). The SPSO will only investigate if the claimant has previously complained to the local authority (see Review above) and not received a satisfactory response.

² For example, see *R (MA & Ors) v Secretary of State for Work and Pensions* [2013] EWHC (2213)

The SPSO has the power to investigate and, where appropriate, make recommendations to the local authority in question. Their recommendations may include asking the local authority to apologise, to change their procedures or to return the situation to how it would have been had they acted correctly in the first instance. The SPSO cannot award compensation.

There is no cost to making a complaint to the SPSO and you do not need a solicitor's help to do so. You can contact the SPSO for a complaint form on free phone 0800 377 7330. Complaints can be lodged online at www.spsso.org.uk/complaints.form. start and you can get help with a complaint from an advice agency (see Where to go for help, page 17).

Where to go for help

Legal Services Agency's Housing and General Court Department tackles the unmet legal needs of clients in Glasgow and the surrounding area, including Inverclyde, with a particular emphasis on defended eviction and landlord and tenant cases, defended mortgage repossession, preventing homelessness, employment law and general social welfare law. It provides advice and representation in all relevant courts and tribunals.

They can assist in situations where the tenant has rent arrears and the landlord has raised court action. In addition, the Housing and General Court Department may take up cases which raise Human Rights issues or other possible points for Judicial Review as detailed above (see 'Judicial Review').

Claimants not subject to court action whose claims do not concern Human Rights/ Judicial Review points can get help from their local GAIN agency. Find a list of GAIN agencies at www.gain4u.org.uk

Further information

Discretionary Financial Assistance Regulations

www.legislation.gov.uk/uksi/2001/1167/regulation/2/made

Discretionary Housing Payments Guidance Manual (April 2013)

www.gov.uk/government/uploads/system/uploads/attachment_data/file/233096/discretionary-housing-payments-guide.pdf

APPENDIX 1

Extracts from the Convention for the Protection of Human Rights and Fundamental Freedoms

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

LSA's Office Bases

Main Office:

LSA, 3rd Floor, Fleming House, 134 Renfrew Street,
Glasgow, G3 6ST,

Tel: 0141 353 3354 Fax: 0141 353 0354

Freephone: 0800 316 8450 E-mail: lsa@btconnect.com

Clients can access advice, information and representation on all areas of LSA's work through LSA's main office at Fleming House.

Edinburgh Office LSA:

3rd Floor, Princes House, 5 Shandwick Place,
Edinburgh, EH2 4RG

Tel: 0131 228 9993 Fax: 0131 228 9994

E-mail: Isaedin@lsa.org.uk

Clients can access the services of LSA's Mental Health Legal Service through the Princes House office.

Greenock Office:

LSA's Inverclyde Housing Rights Project, 9 Sir Michael Street,
Greenock, PA15 1PQ

Tel: 01475 725 665 Fax: 01475 721 329

E-mail: greenock@lsa.org.uk

Clients from anywhere in Inverclyde can access advice, assistance and representation in all aspects of preventing homelessness at LSA's Greenock Office.

North Glasgow Advice Centre:

1169 Royston Road, Glasgow, G33 1EY

Tel: 0141 770 7869 Fax: 0141 770 7976

Clients can access advice, assistance and representation on all aspects of preventing homelessness and social welfare law through LSA's office within North Glasgow Advice Centre.

Legal Services Agency
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Cowcaddens
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0141 353 3354 www.lsa.org.uk

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Glasgow's Advice &
Information Network



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