



## **POLICY NOTE 3: DISCRETIONARY HOUSING PAYMENTS**

**January 2015**

### **1. Introduction**

This policy note considers the role that discretionary housing payments (DHPs) have played over the last four years in mitigating the impact of 'welfare reform'. Specifically, it considers the extent to which DHPs have provided sufficient time and space for families to adapt to reduced levels of state support reducing risk of homelessness, as well as the role that DHPs have played protecting vulnerable groups from unlawful implementation of key provisions of the Welfare Reform Act 2012 .

### **2. The purpose of discretionary housing payments (DHPs)**

Discretionary housing payments (DHPs) are used to help low-income households who rent their homes meet their housing costs. They have existed since 2001 when they replaced exceptional hardship payments, but have come to far greater prominence since the passing of the Welfare Reform Act (WRA) in 2012.

In order to be eligible for a DHP, a household needs to be entitled to housing benefit, council tax benefit or both and "...appear to [their local authority] to require some further financial assistance (in addition to the benefit or benefits to which they are entitled) in order to meet housing costs."<sup>1</sup>

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<sup>1</sup> Discretionary Financial Assistance Regulations 2001 SI No. 11167 p1599

The number of households potentially requiring support of this type has increased significantly since the WRA 2012. Cuts to support introduced by the Act have left many households with a gap between their rent and housing benefit, and with inadequate alternative income to make good this shortfall. To mitigate at least some of this effect, DHPs have been increased to achieve two more specific policy objectives:

- To support affected households for a transitional period during which they are expected to adapt their behaviour either through reducing their housing costs (moving or negotiating rent reductions) or increasing their disposable income (by, for example, earning more or reducing other costs);
- To protect some vulnerable households from the effects of certain cuts to housing support, ensuring lawful implementation of key reforms.

### **3. Funding for DHPs**

Until 2010/11, DHPs received core funding of only £20m annually. In the Budget of June 2010, the government committed to increase funding for DHPs by £10 million in 2011/12, and by £40 million each year in 2012/13, 2013/14 and 2014/15. As they made clear at the time, these uplifts were made specifically to mitigate the effects of the many changes to housing support being made as part of the welfare reform agenda.

The DHP budget received further supplements, however, over the course of the parliament. During the passage of the WRA 2012, concerns were raised about various groups that would be disproportionately disadvantaged by the social sector size criteria (otherwise known as 'the bedroom tax'). Rather than amend the Act, in February 2012 the government agreed to increase funding for DHPs and made clear that this should be used to protect two key groups from the effects of this change as follows:

- £25 million was allocated for disabled people who live in significantly adapted accommodation to enable them to remain in their existing homes;
- A further £5 million was allocated for foster carers who need to keep an extra room for when they are in between fostering placements<sup>2</sup>

In July 2013, DWP announced a further £35 million of funding would be made available in year for local authorities to support households in the social rented sector.<sup>3</sup> This package comprised £10 million to be distributed to all councils; £5 million for the twenty-one least densely populated local authorities along with guidance on expectations for suitable alternative accommodation in rural communities; and £20 million additional funding for councils experiencing high legitimate demand from households affected by the social sector size criteria who have robust policies in place for distributing DHP.<sup>4</sup>

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<sup>2</sup> HL Dec 14 February 2012 c720

<sup>3</sup> DWP Press Release, 30 July 2013

<sup>4</sup> HB Circular A18/2013

Up to £65 million of additional funds was made available for households affected by the ‘benefit cap’, meaning total funding for DHPs peaked in 2013/14 at £180 million. Table 1 summarises the announced changes to total funding for DHPs since 2010/11.

**Table 1: Discretionary housing payments funding and purpose, 2011/12-2014/15 (£million)**

	2011-12	2012-13	2013-14	2014-15
Core DHP funding	20	20	20	20
Additional funding to enable families to manage changes to Local Housing Allowance	10	40	40	40
Additional funding to mitigate impact of the social sector size criteria	—	—	55	60
Additional funding to mitigate impact of 'benefit cap'	—	—	65	45
<b>Total</b>	<b>30</b>	<b>60</b>	<b>180</b>	<b>165</b>

It is worth noting that while DHPs were never intended to fully mitigate the effects of these various policy changes, many commented at the time on the significant discrepancy between the amounts families were losing as a result of welfare reform, and the amounts by which DHPs were increased. Table 2 illustrates the point by setting DHP funding against the cuts to housing support. As can be seen, this shows that even at its peak, DHP funding was equivalent to only 7 per cent of the losses households were subject to as a result of welfare reform.

**Table 2: Cuts to housing support, 2011/12-2014/15 (£ million)**

Measure	2011-12	2012-13	2013-14	2014-15
Changes to local housing allowance	400	885	1360	1720
Other reductions to housing support	70	135	680	695
Benefit cap'	—	110	185	185
Social sector size criteria	—	—	490	490
<b>Total losses to housing support</b>	<b>470</b>	<b>1130</b>	<b>2715</b>	<b>3090</b>
Total DHP funding	30	60	180	165
DHP funding as % of losses	6%	5%	7%	5%

In addition, there were concerns about whether the discretionary nature of the funding was appropriate for meeting these needs. The Work and Pensions Committee raised concerns that “the discretion allowed to local authorities in granting DHPs is resulting in access to DHP funding depending heavily on where a claimant lives”<sup>5</sup>. They were also concerned about whether this type of award was appropriate for those with ongoing rather than transitory needs and asked that “responses other than DHPs should be used to support the majority of claimants facing long-term hardship arising from the reforms, preferably exemptions for disabled people and claimants in temporary accommodation.”<sup>6</sup> These concerns were echoed by the Housing Committee of the London Assembly who found that “the way funding has been allocated varies both between boroughs and within individual boroughs, for ostensibly comparable households.”<sup>7</sup>

<sup>5</sup> Work and Pensions Select Committee, Support for housing costs in the reformed welfare state, 2 April 2014, para 141

<sup>6</sup> Ibid, para 145

<sup>7</sup> London Assembly Housing Committee, Assessing the consequences of welfare reform, April 2014 paras 2.41-

#### 4. Supporting households for a transitional period

The WRA 2012 hoped to reduce the benefits bill by instigating behaviour change including households moving to cheaper accommodation, households increasing earnings from work and landlords reducing rents. DHPs were to provide transitional support while this behaviour change took place. The demand for support of this type remains steady as there has not been the level of anticipated behaviour change and in addition more households have become affected by welfare reform.

Firstly, it is important to note that households hit by welfare reform are not a static group, but instead the cohort of people affected changes as circumstances change. This is shown clearly by data on households subject to the benefit cap. Despite almost 24,000 households in total moving out of the benefit cap since it was introduced (as of latest figures - August 2014), the monthly figures of capped households has only fallen by less than 1200 from its high in December 2013.<sup>8</sup> This shows that the cohort of capped households is fluid and dynamic, with an ongoing stream of households becoming newly affected.

There is also significant evidence that landlords and households have struggled to make the anticipated changes. The removal of the spare room subsidy aimed to make better use of the social rented housing stock by reducing under-occupancy. Between May and December 2013, just 22,340 households had downsized out of 547,341 initially affected in May 2013. The total caseload had only reduced by 9 per cent.<sup>9</sup>

A DWP evaluation of the implementation of the 'benefit cap' found that households that had been capped were 4.7 percentage points more likely to flow into employment after a year compared to similar uncapped households, with 19 per cent of capped households in work after a year.<sup>10</sup> This evaluation was peer reviewed by the Institute for Fiscal Studies who found that whilst the move into work is more likely for capped households, the 'large majority' of capped households have not moved into work<sup>11</sup>. 45 per cent of households in scope of the benefit cap in May 2013 were still in scope 12 months later.<sup>12</sup>

Welfare reform also aimed to tackle a perceived artificial inflation in rental prices caused by the availability of housing benefit. To date, there is little evidence that changes have pushed down rental prices. DWP analysis of LHA changes found that contractual rents had been reduced by £0.79 per week, whereas residents were managing an average rent shortfall of £6.06 per week. It found that "89 per cent of the incidence of reduced LHA entitlement was on tenants and 11 per cent on landlords."<sup>13</sup>

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<sup>8</sup> DWP figures show that since January 2014, the number of capped households has remained steady only dropping from 27,743 capped households to 27,241 in August 2014.

<sup>9</sup> DWP, Supporting tables: Removal of the spare room subsidy analysis, 15 July 2014

<sup>10</sup> DWP, Benefit Cap: Analysis of outcomes of capped claimants, December 2014

<sup>11</sup> C Emmerson and R Joyce, Coping with the cap?, IFS, December 2014

<sup>12</sup> DWP, Benefit Cap: Analysis of outcomes of capped claimants, December 2014

<sup>13</sup> DWP, Econometric analysis of the impacts of Local Housing Allowance reforms on existing claimants, July 2014

Given this, although there may be a slight reduction in demand for DHP to support transition, this is likely to be minimal.

## **5. Mitigating the effects of welfare reform on vulnerable groups**

DHPs have been given an equally significant role to play in protecting vulnerable groups from adverse or discriminatory impacts as a result of changes to housing support. DHPs can be used to protect people not seen as the intended target of welfare reform on an ongoing basis. In the course of parliamentary debates and the development of guidance, four groups in particular have been identified to be considered for additional protection.

### *Disabled people in significantly adapted accommodation*

During the passage of the WRA 2012, the National Housing Federation<sup>14</sup> and Joint Committee on Human Rights<sup>15</sup> both raised concerns about the impact of the 'spare room subsidy' on disabled people in significantly adapted accommodation. Rather than amend the Bill to exempt such families, however, the government announced the additional £25 million funding for DHPs specifically to help this group.

Guidance to local authorities encourages them to identify families living in specially adapted accommodation where it will be more cost effective for them to remain in their current accommodation rather than moving to smaller accommodation which needs to be adapted. These households should be encouraged to apply for DHP.<sup>16</sup> Whilst guidance is not given for the duration of the DHP award, it must be assumed that they are intended to be ongoing at least in the medium term.

DHPs have been crucial in determinations of the lawfulness of the social sector size criteria. In *Rutherford and Todd v SSWP*, for example, the High Court decided that the policy did not have a discriminatory impact on the claimants – two grandparents and their disabled grandson who required an extra bedroom for overnight carers – because the family have been granted a DHP from Pembrokeshire Council to cover the shortfall in rent for a year. The judgement concluded that:

*“...there is at present adequate assurance that the Claimants will continue to benefit from awards of DHPs to plug the gap that would otherwise exist” but critically went on to state “If the scheme or other circumstances were to change materially, different considerations might apply; but they do not apply now.”<sup>17</sup>*

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<sup>14</sup> Written evidence submitted by the National Housing Federation to the Public Bill Committee 2011

<sup>15</sup> Joint Committee on Human Rights, Legislative Scrutiny: Welfare Reform Bill, Twenty-first Report of Session 2010-12, Dec 2011

<sup>16</sup> DWP, Discretionary Housing Payments Guidance Manual, April 2014 para 2.5

<sup>17</sup> *Rutherford & Ors v Secretary of State for Work And Pensions (Rev 1)* [2014] EWHC 1631 (Admin) (30 May 2014) The Rutherfords are currently challenging the decision in the Court of Appeal.

In the case of MA and others, the Court of Appeal found that DHPs did justify the discrimination, particularly drawing attention to DWP commitments that “the fund would be kept under review and topped up if necessary.”<sup>18</sup>

#### *Approved or prospective adoptive and foster carers*

The additional £5 million funding for DHPs for foster carers is designed to ensure that foster carers or potential adoptive parents are not encouraged to move to smaller accommodation which would make them ineligible to become foster or adoptive carers. Guidance to local authorities outlines the following cases where DHP awards should be considered:

- Families who have been approved to adopt but the child is yet to join the household;
- Families who are going through the approval process for adoption;
- When the local authority have specified that the adopted child should have their own bedroom and not share with another child;
- Foster carers who are likely to need more than one additional bedroom for caring for siblings or two or more unrelated foster children;
- People going through the process to become foster carers<sup>19</sup>

#### *Disabled children*

The WRA 2012 specifies that households are exempt from the spare room subsidy if a child is receiving the middle or highest rate of DLA care and is not reasonably able to share a room due to severe disability. However, in addition to this exemption, guidance to local authorities recommends that they consider DHP awards for households where a child does not receive the middle or highest rate of DLA, but where the claimant advises that their child is unable to share a bedroom.<sup>20</sup> It also recommends considering an award where a claim has been made for DLA but has not yet been assessed.

#### *Homeless people in temporary accommodation*

When a household presents as homeless, the local authority has the responsibility to house them in temporary accommodation (TA) for the period where their application is being assessed and, if successful, until they are provided with settled accommodation. Local councils are under an obligation to place households in suitable TA, which includes being affordable, and as far as reasonably practicable, within their home area.<sup>21</sup>

The ‘benefit cap’ has made this a challenging proposition for local authorities however. Temporary accommodation is often more expensive than other forms of housing, and when

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<sup>18</sup> MA & Ors, R (on the application of) v The Secretary of State for Work and Pensions [2014] EWCA Civ 13 (21 February 2014)

<sup>19</sup> DWP, Discretionary Housing Payments Guidance Manual, April 2014 para 2.9-14

<sup>20</sup> Ibid para 2.17

<sup>21</sup> The Homelessness Code of guidance states that ensuring accommodation meets affordability needs includes considering “whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials.” (Code, para 17.40.)

local authorities are required to house larger families or find adequate accommodation in high rent areas, they will rarely be able to find TA that does not bring the household within the confines of the 'cap'.

As a result, families who are accepted as homeless and then placed in TA could be made homeless again due to their inability to cover their costs as a result of the benefit cap. The perversity of this situation was recognised by Lord Freud during the passage of the Welfare Reform Act when he stated:

*'We need to get a solution to this so that we do not have a ludicrous go-round of people moving into expensive temporary accommodation which they can no longer pay for because of the cap.'*<sup>22</sup>

However, amendments to exempt families in TA from the benefit cap were subsequently voted down, and instead, DHPs were once again tasked to fill the gap and ensure local authorities fulfil their homelessness duties. Guidance specifies that DHPs are to be used for amongst others, those in temporary accommodation. Their use was also cited in the Court of Appeal's reasoning in the case of *SG and others vs SSWP* brought by two mothers in temporary accommodation who have fled domestic violence and now face destitution or homelessness as a result of the benefit cap. The judgement said that "DHPs can be made by local authorities to persons who are in temporary need of help to escape from domestic violence."<sup>23</sup>

### *Summary*

Three key points emerge from this short overview of the role DHPs have played in the last four years in mitigating the impact of welfare reform for vulnerable groups:

- Increasing funding for DHPs was the main way that the government responded to accusations that policies such as the 'benefit cap' and the social sector size criteria (also known as 'the bedroom tax' and 'the 'spare room subsidy') would have devastating impacts on vulnerable groups during the passage of the WRA 2012, rather than amending the face of the Act;
- The availability and award of DHPs has been a critical reason why the courts have recently ruled in favour of the government in social sector size criteria challenges. In contrast to the *Rutherford* case, in 2012 *Gorry* (supported by CPAG) successfully challenged cuts to LHA rates on the grounds that they discriminated against disabled adults who need overnight care and disabled children who cannot share a room. In this case, the more limited DHP provision was not considered by the court to be a "complete or satisfactory answer to the problem."<sup>24</sup> Since the increase in funding levels for DHP, a number of challenges have been unsuccessful. For example, in the case of MA and

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<sup>22</sup> House of Lords Debate, 23 January 2012, c893

<sup>23</sup> *SG & Ors (Previously JS & Ors), R (On the Application Of) v The Secretary of State for Work And Pensions* [2014] EWCA Civ 156 (21 February 2014)

<sup>24</sup> *Burnip v Birmingham City Council & Anor* [2012] EWCA Civ 629 (15 May 2012)

others, the Court of Appeal found that DHPs did justify the discrimination, particularly drawing attention to DWP commitments that “the fund would be kept under review and topped up if necessary.”<sup>25</sup> In essence, DHP has been given the power to protect certain groups from welfare reform, rather than through amending legislation;

- All four groups identified here are likely to present an ongoing demand on DHP funding. Disabled adults and children, and foster and adoptive parents, are not households that are expected to change their behaviour to avoid the worst impacts of welfare reform. As a result, they are likely to require ongoing awards. Moreover, while with time many families will move out from temporary accommodation and thereby avoid the strictures of the benefit cap, new families will take their place. There remains an ongoing obligation on local authorities to fulfil their homelessness duties with respect to any new households that are capped when in TA.<sup>26</sup>

## 6. The future of DHPs

Funding levels for DHP have been subject to great uncertainty with funding levels normally announced just two months before the beginning of the financial year and in 2013/14 additional funding was announced in year. Government have not committed to funding levels beyond 2014/15, leading to anxiety that funding could be reduced.

The National Audit Office has criticised the process for determining the level of DHP funding on the grounds that “it is not clear how the overall level of funding has been determined or whether it is likely to be sufficient to tackle the effects of reforms.”<sup>27</sup>

In order to predict future demand for funding, it is sensible to start by looking at spend to date. Whilst there has been variation between councils, the majority of funding for DHPs has been spent since the significant increases in budgets. Table 3 summarises the reasons that awards were made.

In 2013/14, 210 local authorities out of 335 who returned data (63 per cent) spent over 90 per cent or more of their allocation. For the local authorities who returned data, £162m had been committed against a total allocation of £157m.<sup>28</sup> It should also be noted that a large proportion of additional funding was announced in-year making increasing the challenge on councils to manage this budget effectively.

Data has been released for the first 6 months of the year 2014/15. 207 local authorities out of 335 who returned data (62 per cent) had spent 45 per cent or more of their allocation. At the midpoint of the year, for the local authorities who returned data, £95m had been committed against a total annual allocation of £146m.<sup>29</sup> If councils continue to spend at the same level for

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<sup>25</sup> MA & Ors, R (on the application of) v The Secretary of State for Work and Pensions [2014] EWCA Civ 13 (21 February 2014)

<sup>26</sup> Housing Act 1996

<sup>27</sup> National Audit Office, Managing the impact of Housing Benefit reform, November 2012

<sup>28</sup> DWP, Use of Discretionary Housing Payments 2013 to 2014, June 2014

<sup>29</sup> DWP, Use of Discretionary Housing Payments: April to September 2014, December 2014

the second half of the year, councils will significantly overspend against central government funding.

In both years, the majority of funds were for households affected by the social sector size criteria (50 per cent and 56 per cent). This is significantly higher than was intended through the distribution of funds where 31 per cent was earmarked for removal of spare room subsidy in 2013/14 and 36 per cent in 2014/15. Further investigation is needed to see whether this is driven by awards to groups that central government guidance said should be prioritised.

Data for 2013/14 also gives the reason for the award. As can be seen, just 6 per cent of awards are to assist households to move to alternative accommodation. The rest are meeting shortfalls in rent on a short or longer term basis, again suggesting ongoing need.

**Table 3: Discretionary housing payments, reasons for awards, 2013-14**

	<b>No. of awards</b>
<b>Help secure and move to alternative accommodation (e.g. rent deposit)</b>	24,779
<b>Help with short-term rental costs until the claimant is able to secure and move to alternative accommodation</b>	100,230
<b>Help with short-term rental costs while the claimant seeks employment</b>	36,294
<b>Help with on-going rental costs for disabled person in adapted accommodation</b>	13,795
<b>Help with on-going rental costs for foster carer</b>	484
<b>Help with short term rental costs for any other reason</b>	207,031
<b>TOTAL</b>	<b>382,613</b>

Decisions on future funding levels for DHP should be driven by analysis of demand to date. The data released on spend to date does not include information on the characteristics of claimants. However, guidance to councils on use of DHPs suggests that vulnerable groups with ongoing needs should be prioritised, suggesting that they will continue to be significant recipients of these awards.

## **7. Conclusions and recommendations**

DHPs have played a key role in protecting vulnerable groups from the worst effects of welfare reform to date. Not only have they cushioned the impact of benefit cuts for families and individuals, they have also protected the government against legal claims of discrimination.

CPAG believes that the social security system should provide support based on need, rather than rely on discretionary, time-limited payments to fill in the gaps. In our view DHPs are not adequate to protect low-income families. The insecurity of funding encourages councils to make short term awards, causing stress for families who have to repeatedly re-apply for support. By their very nature, they are discretionary, with eligibility decided locally on a case by case basis. Even if central government intend for certain groups to be protected, there is no duty on councils to adhere to this intention.

However, while policies such as the 'benefit cap' and the social sector size criteria remain on the statute book, DHPs are essential. For this reason, we recommend that:

- In the immediate future, funding for DHP must be protected from further reductions. Shortfalls in housing costs are affecting more families and are becoming more significant as a result of the breaking of the link between rent levels and available support. Cuts to DHPs will increase pressure and drive up costs to other statutory bodies, especially when LWP funding is at risk.
- In the medium term, the mechanism for setting DHP funding levels should be made transparent and reflect expected need.
- In the longer term, DHPs are inappropriate for people with ongoing issues. The government needs to explore a long term solution for the most vulnerable groups it aims to protect.

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