



Eastleigh Borough Council

Benefits Service

Discretionary Housing Payment Scheme (DHP)

Policy Statement

April 2022

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PART 1

1. **PRIMARY LEGISLATION**

Section 69-70 of The Child Support, Pensions and Social Security Act 2000 and The Human Rights Act 1998.

2. **SECONDARY LEGISLATION**

The Discretionary Financial Assistance Regulations 2001 (SI 2001/ 1167) as amended by the Council Tax Benefit Abolition (Consequential Provisions) Regulations 2013 provides the legal framework for Discretionary Housing Payments (DHPs). The Department for Work and Pensions (DWP) provide guidance to Local Authorities (LAs) on how DHPs can be used, Local Authorities have a large degree of discretion over the scheme and there are few regulatory restrictions. SI 2013/1139 – The Welfare Reform Act 2012 (Consequential Amendments) Regulations 2013.

3. **BACKGROUND**

In July 2001 a new Discretionary Housing Payment (DHP) scheme gave Local Authorities the power to top up the Housing and Council Tax Benefit.

The DWP have produced an updated Discretionary Housing Payments Guidance Manual in May 2016, updated in March 2018, to promote good practices and give guidance to the administering authority.

The guidance was updated to reflect amendments to the Discretionary Financial Assistance Regulations which ensure the scheme covers the introduction of Universal Credit and abolition of Council Tax Benefit from April 2013.

The main features of the scheme are that:

- The scheme is purely discretionary; a claimant does not have a Statutory right to a payment.
- The amount that can be paid out by an Authority in any financial year is cash-limited by the Secretary of State.
- Any unspent Discretionary Housing Payment funding will have to be returned to the Department for Works and Pensions.

The administration of the scheme is for Eastleigh Borough Council to determine and ensure that payments are made in accordance with the rules governing entitlement.

Discretionary Housing Payments are not a payment of Housing Benefit. However, the minimum amount of Housing Benefit or Housing element in Universal Credit must be in payment in the benefit week for which a DHP is awarded.

Every year the Government allocates a fund to each Local Authority, but

Local Authorities are allowed to spend up to 2½ times their individual allocations.

However, the extra money must be sourced from their own finances. When a Local Authority's Discretionary Housing Payment budget has been spent, no more payments can be awarded until the next financial year.

PART 2

4. PURPOSE OF THE POLICY

The purpose of this policy is to specify how Eastleigh Borough Council's scheme will operate and to indicate some of the factors that will be considered when deciding if a Discretionary Housing Payment (DHP) can be made. Each case will be treated strictly on its own merits and all customers will be treated equally and fairly when the scheme is administered.

On-going monitoring of successful and unsuccessful claims will be carried out to remove any potential for unlawful discrimination.

Eastleigh Borough Council is committed to working with the local voluntary sector, social landlords and other interested parties in the Borough to maximise entitlement to all available state benefits and this will be reflected in the administration of the DHP scheme.

DHPs will be available to cover shortfalls between Housing Benefit or the Housing element within Universal Credit and the rent liability where financial hardship exists. In cases and where funds are available DHPs will be used to assist claimants with rent in advance or help with relocation expenses where the move ensures that cheaper alternative accommodation has been obtained and is affordable without further DHP payments being required.

All claimants who are entitled to the minimum amount of Housing Benefit or the Housing element in Universal Credit and who have a shortfall are entitled to make a claim for DHP financial assistance.

Eastleigh's Benefit Service will work with the Council's Homelessness Team, local voluntary organisations, social landlords and other interested parties to maximise entitlement to the scheme.

The policy has had regard to the rights of individuals and obligation of the Council under the legislation contained in Part 1 of this policy.

5. EQUALITY

Eastleigh Borough Council is committed to the equality of opportunity and valuing diversity in both the provision of services and in its role as a major employer.

Eastleigh Borough Council believes that everyone has the right to be treated with dignity and respect. We are committed to the elimination of unfair and unlawful discrimination in all our policies, procedures and practices. We are determined to ensure that no member of the public, employee or job applicant receives less favourable treatment on the grounds of their age, childcare or other caring responsibilities, disability, gender, HIV status, language, marital status, race, religion, sexual orientation, membership, or non-membership of a trade union, or by any requirement which cannot be shown to be justifiable.

6. DATA PROTECTION

This policy is compatible with General Data Protection requirements.

PART 3

7. CRITERIA AND DECISIONS

Customers will be asked to provide details of their weekly or monthly income and expenditure and evidence of the rent they are charged. Eastleigh Borough Council Benefit specialist staff will then look at their net available income to determine how much of the shortfall they can then meet. Unlike Housing Benefit, which has income such as child benefit and child maintenance payments disregarded, all sources of income will be considered in determining eligibility for a Discretionary Housing Payment.

Before an award is made, we must be satisfied that the customer:

- Is entitled to Housing Benefit or the Housing element in Universal Credit; and
- Requires further financial assistance with housing costs and
- Has no other means to meet the shortfall.

8. WHAT IS MEANT BY HOUSING COSTS

Housing costs are not defined in the regulations and this gives LAs a broad discretion to interpret the term as they wish.

In general, housing costs means rental liability. However, housing costs can be interpreted more widely to include:

- Rent in advance.
- Deposits.
- Other lump sum costs associated with a housing need such as removal costs.

Following the abolition of Council Tax Benefit from April 2013, DHPs can no longer be made towards Council Tax liability. However, any increased expenditure will be considered when deciding on a DHP claim.

The legislation gives Local Authorities 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.

9. STATEMENT OF OBJECTIVES

The Council will consider making a payment of DHP to claimants who meet the qualifying criteria as specified in this policy. Each application will be treated on the individual merits of the claim and will seek through this policy to:

- Alleviate poverty.

- Encourage and sustain people in employment.
- Help claimants through personal crises and difficult events.
- Help safeguard residents whose tenancies are threatened.
- Keep families together.
- Help those who are trying to help themselves.
- Support the vulnerable and the elderly in the local community.
- Support young people in the transition to adult life.
- Support young people leaving Local Authority care.
- Support foster carers and those between fostering.
- Support people with disabilities.
- Promote good educational outcomes for children and young people.

The Council considers the DHP scheme should be either a short-term emergency fund or it could be an indefinite award until the claimant's circumstances change. It is dependent on the customers' need but it is not and should not be considered as a way around any current or future entitlement restrictions set out within the Housing Benefit legislation.

10. STRATEGIC PRIORITIES

Successful management and allocation of the DHP funding available contributes directly to two of the Council's Strategic Priorities contained in the Corporate Plan:

- A Prosperous Place
- A Healthy Community

11. IMPROVING ACCESS TO A DECENT HOME

DHP helps to maximise opportunities for people to live in local communities where they feel they belong and to sustain our progress in reducing and preventing homelessness in the Borough.

PART 4

12. CRITERIA FOR AWARDS

Before an award is made the LA must be satisfied that the claimant is entitled to:

- Housing Benefit (HB); or
- the Housing element in Universal Credit (UC).
- has a rental liability; and
- requires further financial assistance with housing costs.
- has no other means to meet the housing costs shortfall

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.

13. TYPES OF SHORTFALLS THAT A DHP COVERS

The various types of shortfalls that a DHP can cover include the following:

- Reductions in HB or UC (customer has a rental liability and is eligible for the Housing element) where the benefit cap has been applied.
- Reductions in HB or UC (customer has a rental liability and is eligible for the Housing element) for under-occupation in the social rented sector.
- Reductions in HB or UC (customer has a rental liability and is eligible for the Housing element) because 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.
- Rent deposits and rent in advance (where a customer is unable to receive financial support under the Council's existing Rent Deposit Loan Scheme).
- Removal costs (where a customer has been unable to obtain these from their housing provider).
- Expenditure higher than income due to multiple debts (refer to other agencies e.g., Citizens Advice Bureau for debt advice).
- Unaffordable rent (refer to Homelessness Team for further advice and assistance).
- Property is larger than current needs due to pregnancy.
- Medical condition making it difficult to move.
- Increases in essential work-related expenditure such as increased fares to work if a customer has had to move because they could not afford to live in proximity to their work following a reduction in their LHA rates.
- Short term emergency, crisis in family etc.
- Tied into existing tenancy.
- Shortfall on original assessment of needs or benefit estimate.
- Assist the customer to secure a tenancy or retain an existing tenancy.

The above list is a guide and is not exhaustive:

14. WHAT A DHP CANNOT HELP WITH

There are certain elements of the rent that cannot be included in the housing costs for the purposes of a DHP because the regulations exclude them such as:

- Ineligible service charges (as specified in Schedule 1 of the Housing Benefit Regulations).
- Mortgage payments
- Water, sewerage and environmental services (as defined and calculated under Housing Benefit provisions).
- Increases in rent due to outstanding rent arrears.
- Shortfalls due to HB overpayment recovery.

- Claimant's whose HB has been reduced because of the new Loss of Benefit (LOB) penalty will not be entitled to a discretionary housing payment to make up the shortfall. Regulation 3(I) of the Discretionary Financial Assistance Regulations 2001 has been amended so that such a payment cannot be made to a claimant who is subject to a loss of benefit for a fraud offence. Along with other sanctions as detailed in the guidance.
- Following the abolition of Council Tax Benefit from April 2013, DHPs can no longer be made towards Council Tax liability.

15. FRAUD

The Council is committed to the fight against fraud. A claimant who tries to fraudulently claim a DHP by declaring false information, providing a false statement or evidence in support of their application, may have committed an offence under the Theft Act 1968 or other legislation.

Where Eastleigh Borough Council suspects such a fraud may have occurred, the matter will be referred to the Senior Specialist (benefits) who will decide on the appropriate action including the instigation of criminal proceedings.

16. PREVENTION OF HOMELESSNESS

Eastleigh's Benefit Service and the Housing Team work closely together to promote the availability of DHPs. Procedures are in place for requests for DHPs to be made with the help of both the Benefit and Housing Officers to help retain tenancies, help prevent homelessness and where rent in advance/rent deposits are required.

17. CLAIMING A DHP

A claim for a Discretionary Housing Payment must be made in writing (using the Council's Discretionary Housing Payment application form) and signed by the claimant. Only the Council can accept claims for Discretionary Housing Payment.

On request or in appropriate circumstances the claimant will be issued with a Discretionary Housing Payment application form and be requested to return it along with the specified supporting documentation. Claims for Discretionary Housing Payments can only be made once an award of Housing Benefit/Universal Credit has been made or at any time thereafter. The form is also available on the Council's website.

A request may be made for any (reasonable) evidence in support of an application for a Discretionary Housing Payment. Any such request will be made in writing, by e-mail, by telephone or by a home visit. If the claimant fails to provide the evidence his claim for DHP will be cancelled although the time scale for providing information may be extended in appropriate circumstances.

The Council also reserves the right to verify any information or evidence provided by the claimant in appropriate circumstances.

18. AWARDING A DHP

In deciding whether to award a Discretionary Housing Payment, the Council will consider:

- The income and expenditure of the claimant, their partner and any dependants or other occupants of the claimant's home.
- Any savings or capital that might be held by the claimant or their family.
- The shortfall between the weekly Housing Benefit (the Housing element of Universal Credit) and the weekly liability.
- Any steps taken by the claimant to reduce their rental liability.
- The financial and medical circumstances of the claimant, their partner and any dependants and any other occupants of the claimant's home.
- The level of indebtedness of the claimant and their family.
- The exceptional nature of the claimant and their family's circumstances.
- The possible impact on the Council of not making such an award, e.g., the need to prevent homelessness.
- Any other special circumstances brought to the attention of the Benefits Service within Eastleigh Borough Council.

The Council will decide how much to award based on the individual circumstances. This may be an amount below the difference between the liability and the payment of Housing Benefit.

An award of a Discretionary Housing Payment does not guarantee that a further award will be made at a later date even if the claimant's circumstances have not changed.

19. PERIOD OF AWARD

Each claim will be decided on its own merits and a short-term payment or longer-term payment may be considered depending on the circumstances around the financial hardship. It is not and should not be considered as a way around any current or future entitlement restrictions set out within the Housing Benefit legislation/Universal Credit legislation.

In all cases, a decision will be made on the length of time for which a Discretionary Housing Payment (DHP) will be awarded based on the evidence supplied and the facts known.

- The start date and length of an award will normally be decided by the Benefit Specialist making the decision which could be for a future or past date depending on the circumstances.

The level of a DHP in the case of a shortfall will not exceed the weekly eligible rent of their home when added to their weekly Housing Benefit or Housing element of the Universal Credit award.

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 (UC), LAs will have to consider claims from customers who are receiving UC and not Housing Benefit. As the element of UC that covers housing costs will not be identifiable in the payment of UC any award of DHP to UC customers will be made on the basis that it cannot exceed the weekly eligible rent

20. BACKDATING AN AWARD

The Council will look at each claim on its own merits when deciding whether or not to backdate a DHP. Unlike Housing Benefit there are no rules on backdating, but the Council will act consistently. DHPs can only be considered for a period where the linked Housing Benefit or Universal Credit is payable.

Any reasonable request for backdating a DHP award will be considered but such consideration will normally be limited to the financial year in which the claim for a backdate is made but in exceptional circumstances can be made for a maximum of up to 3 months in the preceding financial year.

21. LUMP SUM PAYMENT

When awarding a Discretionary Housing Payment for rent in advance or a deposit the weekly limit will not apply as we are awarding lump sum to meet an immediate need.

Before awarding a Discretionary Housing Payment for a deposit the Specialist will liaise with Housing colleagues to ensure that landlords have been made aware of their legal obligations to protect any deposit paid in a Government approved tenancy deposit protection scheme. Compliance with this requirement will help reduce the need for future help with deposits. When making a Discretionary Housing Payment to assist the customer with securing a new tenancy we will make the payment to the landlord rather than the customer.

Before awarding a Discretionary Housing Payment for rent in advance or rent deposit the Specialist will ensure we have established with the customer whether they:

- Are due to have a deposit or rent in advance in respect of their existing tenancy returned to them.
- Have no other means of obtaining the deposit from their own resources or from other internal or external sources
- If a rent in advance is being requested from a Registered Social Landlord (RSL) the maximum amount, we will award is 2 weeks. However, if the tenant is moving from and to the same RSL these requests will not be considered.

22. CHANGES OF CIRCUMSTANCES

The claimant has a duty to notify the Benefit Service within Eastleigh Borough Council of all change in circumstances.

An award of a Discretionary Housing Payment may be revised where the claimant's circumstances have changed but will be revised in all cases where the amount of DHP would then exceed the rent liability due to the change of Housing Benefit/Universal Credit being paid.

23. METHOD OF PAYMENT

The Council will decide the most appropriate person to pay based upon the circumstances of each case. This could include paying:

- The claimant.
- Their partner.
- An appointee.
- Their landlord (or an agent of the landlord); or
- Any third party to whom it might be most appropriate to make payment.

The Council will pay an award of Discretionary Housing Payment by electronic transfer (BACS).

Payment frequency will normally be made in line with how Housing Benefit or Universal Credit is paid.

24. NOTIFICATION

The Council will inform the claimant of the outcome of their application within 14 days, or as soon as practically possible thereafter. Where the application is unsuccessful, the Council will set out the reasons why this decision was made and explain the right of review. Where the application is successful, the Council will advise:

- the weekly amount or lump sum amount of the DHP awarded,
- how, when and to whom the award will be paid,
- the period covered by the award if a weekly amount and
- the requirement to report a change in circumstances.

25. REFUSED DHP

Where a request for a DHP has been refused, it is not expected that repeated requests will be considered unless the customer can demonstrate that the situation has significantly worsened, or a substantial period of time has elapsed.

PART 5

26. THE RIGHT OF APPEAL

DHPs are not payments of Housing Benefit or Universal Credit and are therefore not subject to the statutory appeals mechanism. All Councils are expected to set up an appropriate review process.

The Council will operate the following policy for dealing with appeals about a refusal to award a DHP or any other matter contained within that decision.

- A claimant (or their appointee or agent) who disagrees with a DHP decision may dispute the decision.
- All appeals must be made in writing to the Service Manager (Benefits) and must be received within one calendar month of the written decision being sent.
- Initially the appeal will be looked at by another Specialist (not party to the original decision). The Specialist will then either; revise the initial decision (re-consideration) and give new rights of appeal or escalate to the Service Manager if they believe the initial decision is correct.
- If new evidence is given the original Specialist could review the situation but if unable to change their decision it would then be passed to another Specialist.
- If the Service Manager (Benefits) decides to revise the previous decision the claimant will be notified of that decision, in writing, informing them of the amount, date and length of the award.
- If the Service Manager (Benefits) not to revise the decision the claimant will be notified of that decision in writing, setting out the reasons for the decision.
- In exceptional circumstances one month time period for appeal will be extended. In deciding whether to extend the time limit for appeal, the Service Manager (Benefits) will have regard to all relevant reason for the delay. The decision whether to extend the time period for appeal will rest with the Service Manager (Benefits) and there will be no further right of appeal.
- The Service Manager (Benefits) decision will be final with any further challenges being made through the judicial review process.
- In cases of alleged maladministration by the Council, the claimant must follow the Council's complaints process before contacting the Local Government Ombudsman.

The above process will ensure fair and consistent decisions are made.

27. OVERPAID DHPs

The Council will always seek to recover any DHP found to be overpaid if payment is made because of misrepresentation or failure to disclose a material fact, fraudulently or otherwise.

28. RECOVERY FROM ONGOING HB

The Council can look to recover DHPs from on-going Housing Benefit.

Normally recovery will involve issuing an invoice to the claimant or the person to whom the award was paid if it cannot be deducted from ongoing benefit entitlement.

29. PUBLICITY

The Council will continue to publicise the scheme and will work with all interested parties including the Council's Homelessness Team to achieve this.

A copy of the policy statement will be made available at request to any interest parties and will be posted on the Eastleigh Borough Council Website.

30. VALUE OF THE FUND

The Council will keep a record of payments made and monitor the existing expenditure against the amount available in the fund.

For 2022/2023 the level of the fund for Eastleigh Borough Council is as follows:

Government contribution: £120,789

Overall limit: £301,973

Additional funds may be set aside to allow spending over the DHP fund allocated by DWP; Though expenditure must not exceed the overall limit set for the Authority

31. MONITORING AND REVIEW

The Service Manager (Benefits) will routinely monitor the number and amounts of DHP awards to ensure it informs future policy decisions.

The Discretionary Housing Payments (Grants) Order 2001 requires LAs to submit a DHP claim form providing details of expenditure twice a year (1 September and 30 April). The DHP claim is required to be signed by the Section 151 Officer or a delegated officer provided the DWP has specimen signatures for their records. The Service Manager (Benefits) will be a delegated officer for the purpose of signing the DHP claim forms.

There is also a requirement to record the reason for the DHP award against one of the four criteria below for DWP monitoring purposes:

- To support customers affected by the Benefit Cap
- To support customers affected by the social sector size criteria
- To support customers affected by the LHA reforms
- Any other reason

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