

REPORT TO: Cabinet

MEETING DATE: 11 November 2014

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Revision to Discretionary Housing Payment Policy

1 PURPOSE

- 1.1 To seek Cabinet approval for the revised Discretionary Housing Payment, (DHP) Policy.

2 RECOMMENDATIONS

- 2.1 That Cabinet approves the revised Policy.
- 2.2 That the Cabinet agrees to delegate authority to the Head of Council Resources to approve any further DHP Policy amendments which may be required to respond to a rapidly changing DHP environment.

3 BACKGROUND

- 3.1 The current DHP Policy was approved by the Head of Council Resources under delegated authority agreed at the Council Meeting on 26 February 2013. The Policy was drafted to inform the decisions taken by the Council's Benefits Service in light of the impact of Welfare Reform changes which were subsequently introduced on 1 April 2013.
- 3.2 Following a number of changes made to the DHP scheme the Council was notified on 16 September 2014 that additional Scottish Government DHP funding would be made available for the mitigation of the so called 'bedroom tax' (Housing Benefit Under Occupancy reductions) in 2014/15. As a consequence the existing DHP Policy now needs to be revised.
- 3.3 In order to achieve full mitigation of Under Occupancy benefit reductions the revised Policy allows for the streamlining of the DHP application process whereby applicants can either complete a shortened DHP claim form or have one completed on their behalf by an employee of East Lothian Council or other registered social landlord.

4 POLICY IMPLICATIONS

- 4.1 If approved, the revised Discretionary Housing Payment, (DHP) Policy becomes effective with immediate effect.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 An Equalities Impact Assessment carried out on the initial DHP confirmed that no negative impacts had been found. This latest review of the DHP Policy has expanded its reach therefore further reducing the likelihood of negative impacts on East Lothian Residents.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – East Lothian’s DHP funding for 2014/15 from all sources is as follows:

DWP	SG (Initial Award)	Sub Total	SG (Further Award)	Total
£122,558	£183,837	£306,395	£121,086	£427,481

- 6.2 Whilst current estimates show that DHP expenditure will exceed the funding level committed to-date East Lothian Council’s DHP funding in 2014/15 will be further supplemented by additional Scottish Government funds held in reserve to deal retrospectively with unforeseen ‘actual’ expenditure which may exceed funds currently committed.

- 6.3 Personnel – None

- 6.4 Other – None

7 BACKGROUND PAPERS

- 7.1 Appendix 1 - Approved Discretionary Housing Payment (DHP) Policy.

- 7.2 Appendix 2 – Copies of streamlined DHP claim forms.

- 7.3 Appendix 3 – Additional DHP briefing note.

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East Lothian Council

Discretionary Housing Payment Policy, (Revised 11 November 2014)

2014/15

DRAFT

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Introduction

Discretionary Housing Payments (DHPs) provide customers with further financial assistance with their housing costs to alleviate hardship to allow customers time to find alternative solutions to housing issues and/or shortfalls in income. The availability of DHPs will be promoted by the benefits service and the Authority will do everything possible to make it easy for potential beneficiaries of DHPs to apply and assist claimants during the process.

Background

On 2nd July 2001 the DHP scheme was introduced. It granted all local authorities power to make a discretionary award to top up the Housing Benefits (HB) statutory schemes. The legislation governing DHPs can be found in the Discretionary Financial Assistance Regulations 2001 (SI2001/1167) and the subsequent amendment regulations.

Following recent welfare reforms, the Government contribution has increased to support specific groups of people, as follows:

- Those affected by the benefit cap
- Those affected by the size criteria in social rented sector
- Those affected by local housing allowance reductions

Traditionally DHP funding was provided by the DWP with provision allowing LAs to contribute 2 ½ times the UK government contribution. Following recent representation made by the Scottish Government this overall DHP expenditure limit has been lifted to allow greater scope to use additional Scottish Government funds for the full mitigation of hardship caused to by the social sector size criteria reduction.

Distribution of DHP Funding for 2014/15

In a letter dated 16th September 2014 Margaret Burgess, Minister for Housing and Welfare confirmed that in addition to the £20m SG funding already distributed, the lifting of the overall DHP expenditure limit would see ELC receive a further share of the £15m that the Scottish Government had previously been unable to distribute.

The distribution of the SG further award was based on average number of HB cases affected by under occupancy. However in recognition that the distribution methodology might not accurately forecast DHP expenditure on under occupancy £3m was held back in reserve to allow Councils to retrospectively claim against their 'actual' expenditure.

The ELC Benefit Service's analysis of projected DHP expenditure suggests that it's allocation of DHP funding (as @ 29th September 2014) will be insufficient to achieve the Scottish Government's objective of full mitigation of the social sector size criteria reduction without overspending the fund. Nonetheless, a decision to commit to further

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DHP awards to achieve full mitigation has been taken. The Service will continue to update SG on the resulting overspend position in order to clearly flag the extent of the retrospective claim it will make for 'actual' expenditure.

Overarching Principles of the DHP Scheme

Although the scheme conveys a large degree of discretion, we will take account of the purpose of the increased funding when considering applications for DHPs.

DHPs can cover shortfalls between eligible rental liability and payment of Housing Benefit (HB) and help towards housing costs.

Consideration should also be given to the impact of recent welfare changes introduced with effect from April 2013.

The main features of the scheme are:

- The scheme is purely discretionary and a claimant does not have a statutory right to a payment
- Every year the Government allocate an amount that can be paid out by each local authority in any financial year. East Lothian Council is able to pay additional money but this must be funded from our own finances
- The administration of the scheme is for the local authority to determine
- DHP is not a payment of HB. However the minimum amount of HB must be in payment in the benefit week that a DHP is awarded for
- It cannot be used to offset overpayment recovery or to cover ineligible service charges

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Purpose

The purpose of this policy is to specify how East Lothian Council will operate the scheme from November 2014, to indicate some of the factors that will be considered when deciding if a DHP can be made and to provide guidance on periods of awards and repeat claims. Each case will be treated strictly on its merits and all customers will be treated fairly and equally. East Lothian Council is committed to working with the local voluntary sector, social landlords and other interested parties to maximise entitlement to all available state benefits and this will be reflected in the administration of the DHP scheme. The main objectives when considering an award in East Lothian are:

- Alleviating poverty
- Mitigation of Social Sector Size Criteria reductions to Housing Benefit
- Encouraging and sustaining people in employment
- Tenancy sustainment and homeless prevention
- Safeguarding residents in their own homes
- Helping those who are trying to help themselves
- Keeping families together
- Supporting domestic violence victims who are trying to move to a place of safety
- Supporting the vulnerable in the local community
- Helping customers through personal and difficult events
- Supporting young people in the transition to adult life
- Promoting good outcomes for children and young people

Claiming a DHP

A claim for DHP must be made in writing or by telephone, (either by the customer, East Lothian Council employee, Registered Social Landlord employee or other person nominated to act on the customer's behalf). Anyone enquiring about a DHP (either by phone, in person or correspondence) will be asked whether they wish to apply for a DHP and their case will then be referred to the Benefit section. The advice, assistance and support will be holistic in nature and consider all options in relation to alleviating the reasons for the DHP application being submitted. Additionally the local authority will be able to work cooperatively with the applicant/claimant in submitting any relevant information needed for the application to be considered. In cases where a financial

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assessment is required the form will incorporate a standard income and expenditure sheet that has been designed to ensure consistency of information and evidence gathering on financial matters. The council reserves the right to request any supporting evidence it deems to be relevant to the application. If the customer is unable or does not supply the required evidence, the benefits service will still consider the application and will take into account any other available factors. If the customer has no valid reason for failing to supply the required evidence, the DHP will be refused.

Matters for consideration

In considering whether to make a DHP award, the customers' financial situation may be looked at. Some other factors that may be taken into account are:

- The extent of the shortfall, including whether the customer has capital or disregarded income which can be used to meet it, or whether anyone else is able and willing to help meet the shortfall?
- Has the customer been affected by the Social Sector Size Criteria reduction?
- Is the reason for the shortfall due to other welfare reform changes?
- Is there a real risk of eviction because of the shortfall, or will the landlord accept a reduced payment?
- If the customer has recently taken up the tenancy, did they make enquiries with the local authority or any other service providers about how much benefit they could be expected to get prior to signing up? Could the recently signed tenancy agreement be considered as affordable in relation to the applicant's income?
- What steps has the customer taken to try to reduce their rental?
- What steps has the customer taken to alleviate the problem?
- Does the customer, or anyone in the household, suffer from a health problem, illness or disability, which means that their choice of housing is restricted?
- Does the customer have other debts to pay, which make meeting the shortfall more difficult?
- DHPs are not to be provided to pay off other debts. The dates the debts were incurred are relevant, particularly where arrangements were entered into when rent is being restricted. Customers should take some responsibility for their level of debt, and the amount they can afford to pay from their income
- If the customer has debts, have they taken advice on how to manage them effectively?

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- Does the customer or anyone in the household have any unusual or unusually large expenses which make it harder than normal for them to meet the shortfall?
- Has there been a change of circumstances, which makes it more difficult to meet the shortfall?
- Could the customer reduce other outgoings so that they can meet the shortfall?
- Is this a repeat request for a DHP? If it is, what steps has the customer taken to try to alleviate the problem since the last application?
- Is the situation short term?
- If the DHP application is successful, what steps does the customer plan to take during the payment period to alleviate their position in preparation for when the payment ends.

Period of award

The benefit service will decide the length of time for which a DHP will be awarded on the basis of the known facts and evidence supplied. The award can be reviewed at regular intervals.

The minimum period of award will be one week, with the maximum of 52 weeks. The start date of a DHP award will usually be:

- The Monday following receipt of the DHP claim, or
- The date on which entitlement to HB commenced (providing the claim is received within one calendar month of the HB decision, or
- The Monday after a relevant change in circumstances giving rise to the need for the DHP
- In regards to Social Sector Size Criteria cases the start date of the DHP award will be determined by the extent of hardship caused by the claimant's under occupancy of their tenancy.

A DHP shall not be awarded for any period for which the customer has no entitlement to HB.

The benefits service may need to revise or revoke a DHP award where the customers' circumstances have materially changed. It is the customers' responsibility to notify the council as soon as any change occurs. Any amendment to the claim will be effective from the date of change.

The benefits service will exercise discretion when considering requests for backdating a DHP application.

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The Decision

The Benefit service aims to deal with all applications for DHP within 14 days of the claim form and all accompanying information being received.

Customers will be notified in writing of the outcome and the letter will state the reasons for the decision.

Where the application is successful the notification will advise:

- The weekly amount of the DHP award
- The period of the award
- How, when and to whom the DHP will be paid
- The requirement to report any relevant change

All notifications of decisions on DHP claims will offer the opportunity for the customer to seek review.

The right to seek a review

DHPs are not payments of Housing benefit and are therefore not subject to the statutory appeals.

The benefits service will operate the following policy for dealing with appeals against any decision on a claim for DHP:

- A customer, or person nominated to act on their behalf, who disagrees with a DHP decision may dispute the decision in writing, within one month of the notification letter
- The Benefit Manager will consider the dispute. They will review all of the evidence held and make a decision within 14 days. Their decision will be deemed as final and the customer will only be able to make representations through the councils' corporate complaints procedure, seek a judicial review or by complaint to the Local Government Ombudsman.

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Method of payment

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

- The customer
- Their partner
- An appointee
- Their landlord or agent
- Any third party to whom it might be most appropriate to make payment

We will normally pay an award of DHP by BACS. Payment frequency will normally be made in line with the HB award.

Overpayments

The Benefits Service will reserve the right to recover any DHP found to be overpaid. Normally this involves issuing an invoice to the customer or the person to whom the award was paid. Recovery may be made from any ongoing DHP entitlement. The overpayment notification letter will also set out the right of review.

Monitoring

All DHPs will be recorded on the benefits service software system (Capita). Total DHP expenditure will be monitored on a monthly basis by the Benefits Team Leader who will ensure expenditure is within budget and correctly profiled throughout the year.

Monthly reports will be submitted to the Benefits Manager.

A random sample of decisions will be checked for fairness and consistency. All checks will be recorded.

All claims for DHP will be treated equally and fairly in accordance with East Lothian Councils' policy on equal opportunities. East Lothian Council will endeavour to ensure that no-one who applies for DHP receives less favourable treatment on the grounds of any irrelevant consideration including

<ul style="list-style-type: none">• Age• Disability• Gender reassignment• Pregnancy and maternity	<ul style="list-style-type: none">• Race• Religion and Belief• Sexual Orientation• Sex
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Fraud

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East Lothian Councils' Benefit Service is committed to prevent any fraud and error, and to investigate and detect any fraud within the system.

A customer who tries to fraudulently claim a DHP by falsely declaring their circumstances, providing a false statement or evidence in support of their application, may have committed an offence under the Theft Act 1968. Where East Lothian Councils' Benefit Service suspect that a fraud may have occurred, the matter will be investigated, and this may lead to criminal proceedings being instigated.

Review

This policy will be reviewed and revised to take into account any changes in legislation and to improve effectiveness. The effectiveness of this policy will be regularly monitored and results reported to senior officers and Members.

East Lothian Council reserves the right to adjust the way this policy operates from time to time, in all aspects, in the light of experience, prevailing economic climate and national benefit changes.

**Discretionary Housing Payment 2014/15 application form
Under occupation**

Housing Benefit Claimant's Name	
Home address	
Contact telephone Number	
Housing Benefit Claim Number (if known)	

Declaration

I declare that I am applying for a 2014/15 Discretionary Housing Payment due to under occupation of my rented property.

I give East Lothian Council's Benefits Service my permission to share information about this Discretionary Housing Payment application with my landlord.

I understand that, if my own or household circumstances change at any time, I must immediately notify East Lothian Council's Benefits Service and that any overpaid Discretionary Housing Payment may be recovered by the Council.

Signature of applicant:

Date of application:



**Discretionary Housing Payment 2014/15
Telephone application form**

Under occupation

Housing Benefit Claimant's Name	
Date of telephone call	
Home address	
Contact telephone Number	
Housing Benefit Claim Number (if known)	

Employee declaration

I declare that as a East Lothian Council employee / an employee of a Registered Housing Association that I have received consent from the above named housing benefit claimant to apply, on their behalf, for a 2014/15 Discretionary Housing Payment, on the grounds that the applicant is subject to under occupancy rules, as at the 1 April 2014 or later.

Employee Signature			
Print Name		Organisation	
Service		Job title	
Date		Employee contact telephone number	

DHP Briefing Note**11 November 2014 Cabinet Meeting**

1. At the Council Meeting on 26 February 2013 the Council following consideration of a draft, agreed to delegate authority to the Head of Council Resources to finalise the Discretionary Housing Payment, (DHP) Policy. This initial DHP Policy was drafted to inform the decisions taken by the Council's Benefits Service in light of the impact of Welfare Reform changes which were subsequently introduced on 1 April 2013.
2. A revision of the draft Policy took place on 31 July 2013 to take account of the lessons learned since the implementation of the welfare reforms and the additional UK Government funding which was made available to the Council.
3. The DHP Policy was revised once more to take account of additional Scottish Government funding made available from 2 October 2013. Whilst full use was made of all additional funding to extend DHP awards to many Council and RSL claimants impacted by the size criteria change the funding was still insufficient to provide full mitigation for under occupancy. Although the Scottish Government sought to provide sufficient funds at this point, UK Housing Benefit legislation prevented Councils from topping up DHP funds by more than 1.5 x the DWP contribution towards DHP. During the remainder of 2013/14 the East Lothian Council Benefits Service disbursed 100% of the DHP funding allocated alleviating potential hardship caused by a range of welfare reform changes including under occupancy. In doing so the Service spent up to the overall DHP limit.
4. Following a request made by the Scottish Government in May 2014 the Under Secretary of State for the Department for Work and Pensions, (DWP) agreed that legislative changes would be made which would allow the Scottish Government to exceed the overall limit imposed on DHP funding. This in turn allowed the Scottish Government to allocate an additional £15m to assist Scottish Council's to mitigate for the impacts of under occupancy. The distribution of this funding was based on under occupancy caseload figures, however 20% of the fund, (£3m) was held back in reserve in order to meet any unforeseen levels of expenditure. It is understood that Council's which overspend their current DHP allocation will be able to submit a retrospective claim, (in May 2015) for the reserve funding based on their 'actual' under occupancy mitigation expenditure incurred during 2014/15.
5. The Council was advised on 16 September 2014 that additional Scottish Government DHP funding of £121,086 would be made available for the mitigation of under occupancy in 2014/15. East Lothian Council's DHP funding for 2014/15 from all sources is as follows:

DWP	SG (Initial Award)	Sub Total	SG (Further Award)	Total
£122,558	£183,837	£306,395	£121,086	£427,481

6. The latest additional funding allocation coupled with the Scottish Government's stated intent of providing full mitigation for the impact of under occupancy has provided the catalyst for this DHP Policy revision. In order to achieve full mitigation the revised Policy allows for the streamlining of the DHP application process whereby applicants can either complete a shortened DHP claim form or have one completed on their behalf by an employee of East Lothian Council or other registered social landlord.
7. The ELC Benefit Service's analysis of projected DHP expenditure suggests that it's allocation of DHP funding (as @ 29th September 2014) will be insufficient to achieve the Scottish Government's objective of full mitigation of under occupancy without overspending the fund. It will be necessary for the Council to commit to making further DHP awards in the knowledge that this will incur an overspend of the DHP budget. The Benefits Service will regularly update the Scottish Government on the resulting overspend position in order to clearly identify the extent of the retrospective claim it will submit for 'actual' DHP expenditure, (in May 2015).

John Cunningham

Service Manager – Benefits

2 November 2014