

Revenues & Benefits  
Services Section

Discretionary Housing &  
Hardship Fund Payments  
Policy

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## **1. BACKGROUND**

On the 2nd July 2001, a new scheme was introduced which granted all local authorities new powers to award Discretionary Housing Payments (DHP's). The aim of this scheme was to provide further financial assistance, in addition to any welfare benefits, to those claiming Housing and Council Tax Benefit where it appeared that they need additional help with their housing costs.

From April 2013 the DHP scheme has been amended to take into the introduction of Universal Credit and the abolition of Council Tax Benefit. The scheme will still be available to those customers in receipt of either Housing Benefit or Universal Credit who have a reduction or shortfall in that benefit.

With the abolition of Council Tax Benefit from April 2013, which is to be replaced by a Local Council Tax Reduction Scheme, a customer who is receiving local Council Tax Reduction only, with no rental liability (e.g. an owner occupier) will not be eligible to apply for a DHP. In view of this, Gedling Borough Council has introduced a separate Hardship Fund to provide similar assistance to that of the DHP scheme to help vulnerable households who are struggling to meet their Council Tax charges during times of exceptional circumstances or needs.

### **Discretionary Housing Payments (DHP)**

The legislation governing Discretionary Housing Payments can be found in the Discretionary Financial Assistance Regulations 2001(S.I.2001 No.1167)

The DHP scheme covers shortfalls between rental liability and payment of Housing Benefit. Every customer entitled to the minimum amount of Housing Benefit and who has a shortfall is entitled to make a claim for help.

Gedling Borough Council has determined that its Benefit Section will be responsible for the administration of the DHP scheme.

The main features of the scheme are that:

- It is purely discretionary and a customer 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.
- DHP's are completely separate to the Statutory Housing Benefit and Universal Credit schemes. However, the minimum amount of Housing Benefit or universal Credit must be in payment in the benefit week that a DHP is awarded for. The level of a DHP award cannot exceed the shortfall between rent charged and Housing Benefit /Universal Credit paid. There are also elements of a person's rent and shortfalls in benefit that cannot be met by a DHP and these are prescribed by regulations.
- Where the purpose of the DHP is to meet a shortfall, it is entirely Gedling Borough Councils discretion on how much of that shortfall is actually met.

## **Hardship Fund Payment - Council Tax Reduction Scheme**

The legislation governing the introduction of a Local Council Tax Reduction Scheme Hardship Fund Payment can be found in Gedling Borough Council's Council Tax Reduction Scheme which is required under Section 13A (2) of the Local Government Finance Act 1992

The scheme covers shortfalls between Council Tax liability and payments of Council Tax Reduction under the above scheme. Every customer entitled to the minimum amount of Council Tax Reduction and who has a shortfall is entitled to make a claim for help.

Gedling Borough Council has determined that its Benefit Section will be responsible for the administration of the Council Tax Reduction Scheme Hardship Fund.

### **The main features of the scheme are that:**

- It is purely discretionary and a customer does not have a statutory right to a payment.
- The amount that can be paid out in any financial year is cash-limited and is monitored by the authority.
- The amount available is set annually as part of the authority's usual budgets process.
- Hardship Fund Payments are granted separately to any entitlement awarded under Council Tax Reduction Scheme. However, the minimum amount of Council Tax Reduction must be in payment in the benefit week that a Hardship Fund Payment is awarded for.
- The level of award cannot exceed the shortfall between the weekly Council Tax Liability and weekly Council Tax Reduction entitlement
- The level of award may cover all or only part of a shortfall
- Where the purpose of the Hardship Fund Payment is to meet a shortfall, it is entirely Gedling Borough Councils discretion on how much of that shortfall is actually met.

## **2. FINANCIAL IMPLICATIONS**

### **Discretionary Housing Payments (DHP)**

DHP can be used to provide support to customers affected by some of the key welfare reforms. To help local authorities manage the impact of the HB reforms announced in the Summer Budget 2015, the overall DHP funding will be £150 million for 2016/17, an increase of £25 million (20%) compared to 2015/16 funding. This comprises of funding for four separate areas of support; Core funding, Local Housing Allowance (LHA), Removal of the Spare Room Subsidy (RSRS) and the Benefit Cap.

The distribution of the DHP funding is based on the effect of each element on individual local authorities.

- The overall amount spent on the award of DHP's is subject to a cash limit (permitted total) set annually by the Department for Work and Pensions. Gedling Borough Councils permitted total for 2016/17 is £333,998.00
- The permitted total is an amount up to which the Council can spend but cannot exceed in a financial year. An authority is in breach of the law should it exceed its permitted total. The legislation which specifies the overall limit on expenditure is Article 7 of the Discretionary Housing Payment (Grants) Order 2001.
- The Government makes an annual contribution towards the Council's permitted total. Gedling Borough Councils contribution total for 2016/17 is £133,599.00.
- Any spending over and above the contribution, up to the permitted total, will be a charge to the authority's general fund.
- The formula used to calculate the permitted total is 2.5 times each authority's annual contribution from central government.
- The authority will be aware of the amounts of DHP awarded during a financial year to ensure it does not exceed its permitted total. However, the amount of funding left from the government contribution will not be a factor in the decision making process for a DHP. Any unspent DHP funding will have to be returned to the DWP at the end of the financial year

### **Hardship Fund Payment - Council Tax Reduction Scheme**

- The overall amount spent on the award of Hardship Fund Payments is cash-limited. The total for 2016/17 has been set by Gedling Borough Council at £25,000.00
- The amount available is set annually as part of the authority's usual budgets process
- The authority will be aware of the amount of Hardship Fund Payments awarded during a financial year to ensure it does not exceed its budget. However, the

amount of funding left will not be a factor in the decision making process for a Hardship Fund Payment.

### **3. PURPOSE OF THE POLICY**

- The purpose of this policy is to specify how Gedling Borough Council will operate both the DHP and Hardship Fund Payment Schemes and to indicate the factors that will be considered when deciding if a payment can be made.
- It aims to provide guidance on periods of awards and repeat claims.
- This policy ensures that Gedling Borough Council will act fairly, reasonably and consistently throughout the decision making process.
- Each case will be treated strictly on its own merits and all customers will be treated equally and fairly.
- Gedling Borough Council is committed to working with local voluntary organisations, social landlords and other interested parties within the borough to maximise entitlement to welfare benefits in line with our current Take-Up Strategy. This will be reflected in the administration and publicity of the schemes.
- Each scheme should be seen primarily as a short-term emergency fund.
- Gedling Borough Council recognises the restrictions on DHP contained in the Regulations and cannot make a payment in circumstances where there is no eligibility.
- There shall be no award of DHP unless the customer has some entitlement to Housing Benefit or Universal Credit.
- There shall be no award of Hardship Fund Payment unless the customer has some entitlement to the Council Tax Reduction Scheme.

### **4. STATEMENT OF OBJECTIVES**

The Benefit section will consider making a payment to customers who meet the qualifying criteria as specified in this policy. The Benefit Section will treat all applications on their individual merits and will seek, through the operation of the policy, to help and support the following aims:-

- The alleviation of poverty
- To encourage and sustain residents in employment
- To safeguard residents in their own homes and prevent homelessness
- To help those who are trying to help themselves e.g. where a customer is prepared to move to cheaper accommodation or move home to retain work
- To keep families together
- To prevent child poverty
- Support domestic violence victims who are trying to move to a place of safety

- To support the vulnerable in the local community such as:-
  - Low income households
  - Older people
  - Customers with severe debt problems
  - Customer who are addicted to drugs and alcohol
  - Customers who have an illness or disability that affects their accommodation requirements
  - Customers who have learning difficulties or mental health issues
  - Customers who have literacy or language barriers
- To help customers through personal crises and difficult times and events

### **The Shortfalls DHP can cover**

Housing costs are not defined in the regulations and this gives Gedling Borough Council discretion to interpret the term as it wishes. In general housing costs means rental liability. However, housing costs can be interpreted more widely. The various types of shortfalls that a DHP could therefore cover include:-

- Reductions in Housing Benefit or Universal Credit where the benefit cap has been applied **(see Appendix A – Section 1 for full details)**
- Reductions in Housing Benefit or Universal Credit for under-occupation in the social rented sector; **(see Appendix A – Section 2 for full details)**
- Reductions in Housing Benefit or Universal Credit as a result of Local Housing Allowance restrictions; **(see Appendix A – Section 3 for full details)**
- 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 deposit and rent in advance schemes;
- Other lump sum costs associated with housing need such as removal costs.

### **Rent Deposit and Rent in Advance Schemes**

A DHP can be awarded for a rent deposit or rent in advance scheme for a property that the customer is yet to move into if they are already entitled to Housing Benefit or Universal Credit at their present home.

When awarding DHPs for a rent deposit or rent in advance, Gedling Borough Council must be satisfied that the property is affordable for the tenant. Using DHPs for this purpose may be particularly appropriate to help existing customers move to alternative accommodation where their award of Housing Benefit has been restricted following one of the welfare reforms. It may also be appropriate to consider using DHP's for this purpose where Gedling Borough Council's rent deposit scheme is limited or exhausted.

The regulations are wide enough to permit this on the basis of a customer's entitlement to one of the eligible benefits at their current home. The regulations do not

stipulate that the housing costs to which the DHP relates have to be housing costs relating to the property for which benefit has been awarded.

Although Regulation 4 of the 2001 regulations places a limit on the DHP award so that it does not exceed the weekly eligible rent on the customer's home, the limit only applies where the award is calculated as a weekly sum, for example, to meet a shortfall. For rent in advance or a deposit, **the weekly limit does not apply** as Gedling Borough Council is awarding a lump sum to meet an immediate housing need.

When awarding a deposit, the Benefit Section will include information about landlords' 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.

Where it will assist with the securing of a new tenancy, the Benefit Section will consider making any DHP to the landlord of the property rather than the tenant, although each case will be considered on its own merits.

As a lump sum payment for rent in advance is not made in respect of a period, the Benefit Section does not have to be satisfied that a customer is entitled to Housing Benefit other than at the point where an award is made.

If the rent in advance is for a property outside of the Gedling Borough area, this does not prevent the Benefit Section from making a payment of DHP as long as the customer is currently in receipt of Housing Benefit or Universal Credit within the Gedling Borough area.

Before awarding a DHP for rent in advance or a deposit, the Benefit Section we need to establish with each customer whether they:

- are due to have a deposit or rent in advance in respect of their existing tenancy returned to them
- have received assistance from Gedling Borough Council through a rent deposit guarantee scheme or similar

Once a DHP has been made to the customer for rent in advance or a deposit and used for that purpose, legislation does not provide for it to be refunded.

### **DHP's and two homes**

The regulations do not prevent the Benefit Section from awarding DHPs on two homes when someone is treated as temporarily absent from their main home, for example because of domestic violence. In this case, if the customer is treated as liable for rent on both properties, and in both cases there is a shortfall, the customer could have DHPs in respect of both properties subject to the weekly limit on each property.

The regulations do not say that DHPs can only be paid in respect of one property; they just limit the weekly amount that can be paid when the DHP does relate to rent on a person's home.

If the customer is only treated as liable for payments on one dwelling but is having to pay rent on two, for example they are temporarily absent from their normal dwelling to stay near a child receiving treatment in hospital, a weekly DHP could be made to assist with the temporary accommodation up to the level of the weekly eligible rent on the dwelling from which they are temporarily absent.

### **Universal Credit Shortfalls**

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

### **What DHP's cannot cover?**

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

These include:-

- **Ineligible service charges:** - service charges that are not eligible for Housing Benefit cannot be covered by a DHP. These are as specified in Schedule 1 to the Housing Benefit Regulations 2006 and Schedule 1 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. Nor can DHPs cover charges for water, sewerage, and environmental services – as defined and calculated under the Housing Benefit provisions.
- **Increase in rent due to outstanding rent arrears:** - Regulation 11(3) of the Housing Benefit Regulations 2006 and Regulation 11(2) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 refer. This refers to those cases where a customer's rent is increased on account of outstanding arrears which are owed by the customer in respect of their current or former property.
- **Certain sanctions and reductions in benefit:** - DHPs cannot meet these because to do so would undermine the effectiveness of the sanctions or reduction in benefit. These are:-
  - any reduction in Income Support (IS) or income-based Jobseeker's Allowance (JSA(Income Based)) due to a Reduced Benefit Direction (RBD) for failure to comply with the Child Support Agency in arranging maintenance. The RBD is a reduction in benefit of 40% of the personal allowance and only applies to IS or JSA(Income Based)
  - any reduction in benefit as a result of non-attendance at a work-focused interview. This applies both where the person's Housing Benefit is reduced and when any other benefit that the person is receiving, such as IS is subject to a sanction

- any reduction or loss of benefit due to a JSA employment sanction. JSA is not payable for the period of sanction if they have contributed towards their unemployed status, for example, by leaving employment voluntarily or failing to attend a prescribed training scheme. In such cases, it may be possible for a reduced rate of JSA to be paid under the JSA hardship provisions
  - any reduction in benefit due to a JSA sanction for 16/17 year olds – for certain young people who receive JSA under a Severe Hardship Direction. JSA is not payable for the period of the sanction if they have contributed towards their unemployed status, for example, by leaving unemployment voluntarily or failing to attend a prescribed training scheme, or
  - any restriction in benefit due to a breach of a community service order
- **Benefit suspensions:** Housing Benefit can be suspended either because there is a general doubt about entitlement or because a customer has failed to supply information pertinent to their claim. In such cases, it would not be permissible to pay DHPs instead. One of the intentions of the suspension provisions is to act as a lever to ensure that the customer takes the necessary steps to provide the authority with the necessary information/evidence - paying DHPs could reduce the effectiveness of this lever.
  - **Shortfalls caused by Housing Benefit overpayment recovery:** when recovery of a Housing Benefit overpayment is taking place, such shortfalls should not be considered for a DHP.
  - **Following the abolition of Council Tax Benefit from April 2013, DHP's can no longer be made towards council tax liability.**

## **5. CLAIMING A DHP AND/OR A HARDSHIP FUND PAYMENT**

In most cases, the person who claims a DHP will be the person entitled to either Housing Benefit or Universal Credit and in most cases, the person who claims a Hardship Fund Payment will be the person entitled to Council Tax Reduction. However, the Benefit Section may also accept claims from someone acting on behalf of the person concerned, such as an appointee, where it is considered reasonable to do so. An application from an appointee will be accepted where it is considered the customer is unable to make a claim for themselves. This could be due to age, illness, disability or language difficulties etc.

A claim for either a DHP or Hardship Fund Payment may be made initially in writing, verbally or electronically via e-mail. Where a customer makes an enquiry in writing, by telephone or electronically, they will be issued with the appropriate application form or asked to complete an online application via Gedling Borough Councils website.

The customer will be required to complete a form within one month.

The Benefit Section may request any reasonable evidence in support of an application and therefore customers are encouraged to provide this evidence at the time of submitting their application form. The customer will have one month to supply the requested information.

If the applicant is unable to or does not provide the required evidence, the dedicated panel of decision makers who consider each case, will still consider the application and where possible take into account any other available evidence.

## **6. INFORMATION A CUSTOMER MUST GIVE**

Any customer making an application for a DHP and/or Hardship Fund Payment must give:

- information required to make a decision or look at a decision again
- any other information required in connection with their claim.

In establishing if the customer requires further financial assistance, the panel will need to examine the income and expenditure of the customer to decide whether to award a payment or not. This may involve the customer completing an income and expenditure form.

Where a customer is receiving Housing Benefit or Council Tax Reduction Scheme, the Benefit Section will already hold relevant details regarding a person's income and rental liability, which could be used to assess a claim, however additional evidence such as bank statements and bills may be required to support expenditure details.

If a customer is in receipt of Universal Credit, Gedling Borough Council will not necessarily hold details of the customer's income or rental liability. However, data sharing powers introduced on 2 July 2012 provide a gateway for Local Authorities to obtain some relevant information from Department for Works and Pensions to assess claims for DHPs although additional evidence may still be required and the Benefit Section would need to contact the customer directly regarding this.

## **7. AUTHORISED DECISION MAKERS**

A dedicated panel will consider every application made for either a DHP and/or Hardship Fund Payment.

The panel will consist of the Benefit Manager who will be responsible for chairing all meetings, the Appeals Officer and the Administrative Appeals Clerk from the Benefit Section. They will be responsible for setting the level of award and period of payment.

The Appeals Officer and/or Administrative Appeals Clerk will present the case to the panel.

The decision to award a DHP and/or Hardship Fund Payment will be based on a majority vote by members of the panel. If no conclusive decision can be reached then the chair will have the casting vote when making the final decision.

## **8. PERIOD OF AWARD**

In all cases, the panel will decide the length of time for which a payment will be awarded on the basis of the evidence supplied.

Each scheme should be seen as a short term fund to assist financial hardship or housing circumstances, particularly where the customer is trying to find alternative accommodation. Therefore any award made will not normally exceed 6 months.

However, there may be exceptional circumstances where the panel decides to make an indefinite award until that customer's circumstances change. For these cases a review form prior to the end of the existing award will be issued requesting details of what actions, if any, the customer has taken during the period of the original award to improve their situation.

The purpose of a DHP award may be to meet a one off housing need such as a deposit or rent in advance. In this instance there is no requirement for the Benefit Section to specify the period of the award.

The start date of an award will usually be:-

- The Monday after the Benefit Section receives the application form or initial request made to the authority, or
- The date on which entitlement to Housing Benefit, Universal Credit or Council Tax Reduction Scheme commenced, providing that the claim is made within one month of the customer being notified of their entitlement to Housing Benefit, Universal Credit or Council Tax Reduction Scheme, or such reasonable extension of time as officers may consider appropriate in the particular circumstances of the case,
- The Monday after a relevant change in circumstances giving rise to the need for a DHP and/or Hardship Fund Payment.

### **whichever is the most appropriate**

A DHP and/or Hardship Fund Payment cannot be awarded for any period for which the customer has no entitlement to Housing Benefit, Universal Credit or Council Tax Reduction Scheme.

The minimum period for which a payment may be awarded is one week.

DHP's cannot be awarded in respect of a period before the 2<sup>nd</sup> July 2001.

Hardship Fund Payments cannot be awarded in respect of a period before the 1<sup>st</sup> April 2013.

## **9. BACKDATING A DHP OR HARDSHIP FUND PAYMENT**

The panel will look at each claim on its own merits when deciding whether there is “good cause” or not to backdate. There are no rules on backdating, but the panel has a duty to ensure they act consistently when making their decision. It should be noted that an application can only be backdated for a period where the linked Housing Benefit, Universal Credit or Council Tax Reduction Scheme is payable.

When deciding whether to award a backdated payment, the panel will consider factors such as the customer’s income and expenditure, health, age, circumstances, make-up of household and the current local housing market.

There is no legal definition of “good cause”. However, some examples may include areas such as:-

### **Difficulty with language**

Difficulty with language alone is not good cause, but difficulty in communication may be. Claimants are expected to seek help and good cause should not be accepted unless there was no one else who could have enquired on their behalf.

### **Health**

Ill health is always a consideration when determining if good cause exists. A claim for backdating on grounds of ill health will normally require substantiating evidence, such as medical certificates or a letter from a medical practitioner. Delays in claiming after a serious illness may also be reasonable if the claimant has done all that could reasonably be expected in the circumstances.

### **Misled by unofficial information**

If a claimant acts on unofficial advice (from colleagues, friends or relatives, for example) they will not normally be able to show good cause. However, if they acted on advice from a source that may have been considered official or reliable (welfare rights organisations, Social Services etc) then good cause may be accepted.

### **Postal delays**

Good cause should be accepted if there is:

- Normal postal delay (time taken for delivery of post in normal circumstances);
- Unusual postal delay;
- General postal delay brought about by industrial action, for example.

## **10. AWARDING A PAYMENT**

In deciding whether to award a DHP and/or Hardship Fund Payment, the panel will be mindful of the objectives outlined in this policy including the “good practice guide” found at **Appendix B**.

The panel will be required to take into account:

- The shortfall between Housing Benefit or Universal Credit and the rental liability
- Any steps taken by the customer to reduce their rental or Council Tax liability
- The financial and medical circumstances of the customer, their partner and any dependants and any other occupants of the customers home
- The income and expenditure of the customer, their partner and any dependants or other occupants of the customer’s home. Please refer to Gedling Borough Council’s Fair Collection and Debt Recovery Policy for details relating to priority debts and essential spending
- The level of savings or capital that might be held by the customer or their family. Where it is established that the customer or their family have savings or capital in excess of £5,000.00 then no award will be made. However, once that customer has less than £5,000.00 in capital or savings, they can then submit another application if required. Where it is established that a customer or their family has less than £5,000.00 savings or capital, an application will be considered in the normal way and an appropriate decision made
- The number of significant assets held by the customer or their family. Significant assets may include items such as cars and caravans where the capital asset value is in excess of £5,000.00. The customer will be required to provide evidence of any outstanding loans or finance on such items so the authority can establish if there is any equity available. Where it is decided significant assets are held the panel will not consider an application.
- There are, however, exceptions. Where it is considered that the customer is unable to realise that asset or it is essential that they preserve their savings/capital and/or asset/s, then an application will be considered in the normal way and an appropriate decision made. Examples of this include:-
  - Where a customer needs to retain their vehicle and/or tools in order to specifically seek and regain employment.
  - Where savings/capital is held by a customer, specifically to undertake essential or substantial work/repair to their property.
  - Where a customer is pregnant or has recently had a new born child and can demonstrate they need their savings/capital for the purpose of set up costs and/or expenses incurred in respect of that child.

- The level of indebtedness of the customer and their family. The customer will be required to supply the authority with evidence clearly showing the level and type of debt/s currently outstanding. The table below sets out the important debts that people may face. Priority debts are highlighted in bold and will be taken into account when considering an application. Other non-priority debts may not be considered by the authority.

<u>Local Authority Debts</u>	<u>Utility Debts</u>	<u>Other Debts</u>
<b>Council Tax arrears</b>	<b><u>Electricity</u></b>	<b><u>Mortgage arrears</u></b>
<b>Fines</b>	<b><u>Gas</u></b>	<b><u>Income Tax</u></b>
<b>Rent arrears</b>	<b><u>Water</u></b>	<b>Secured Loans/Loans</b>
Sundry Debtors	Other Fuel	<b><u>VAT</u></b>
Benefit Overpayment	Telephone Bills	<b><u>Court Fines</u></b>
<b>Business Rate arrears</b>	Digital TV	<b>Child Maintenance and Enforcement Commission/ Child Support Agency</b>
	TV Licence	Deductions
		Hire Purchase

- The exceptional nature of the customer and their family's circumstances
- Any unavoidable costs that the customer may have such as fares to work. This may include, for example, people who have had to move as a result of welfare reforms such as increasing the age threshold for the shared accommodation rate or introduction of the benefit cap.
- If any benefits have already been committed to other liabilities for which the money was intended, such as Motability schemes, provision of care etc.
- The exceptional nature of the customer and their family's circumstances
- The possible impact on the Council of not making such an award, e.g. the pressure on priority homeless accommodation
- Whether the DHP permitted total has been reached and therefore no award can be made
- Whether the Hardship Fund Payment budget has been exhausted.
- Any other special circumstances brought to the attention of the Benefits Section.

## **11. LEVEL OF AWARD**

The panel will decide how much to award based on all of the customer's circumstances and giving regard to this policy.

This may be an amount below the difference between the rental liability for DHP and the Council Tax Liability for Hardship Fund Payment and the actual entitlement of Housing Benefit, Universal Credit or Council Tax Reduction Scheme.

The award could be an amount between 0% and 100% of the shortfall.

An award of DHP and/or Hardship Fund Payment does not guarantee that a further award will be made at a later date even if the customer's circumstances have not changed.

Customers receiving Universal Credit will not receive a specific amount towards housing costs therefore the panel must decide on the amount of DHP to award, providing it does not exceed the weekly eligible rent.

At the time of application, the panel must be mindful of the amount left available in the DHP budget with regard to the permitted total

At the time of application, the panel must be mindful of the amount of available finances left in the Hardship Fund budget.

## **12. METHOD OF PAYMENT**

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

- The customer or 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.

All DHP payments awarded in order to secure a new tenancy such as a rent deposit, rent in advance or any other administrative charges will be made payable to the landlord directly.

An award will be paid by the most appropriate means available in each case.

This could include payment:-

- By cheque or electronic transfer (e.g. BACS)
- By crediting the customer's Council Tax account

If a DHP is paid with Housing Benefit, notifications to the customer must clearly show how much is Housing Benefit and how much is the DHP.

Payment frequency will normally be made in line with how the Housing Benefit, Universal Credit or Council Tax Reduction Scheme is paid.

### **13. NOTIFICATION OF THE DECISION**

The Benefit Section will inform the customer in writing of the outcome of their application, giving the reasons for its decision. This must be done as soon as is reasonably practicable whilst being consistent and avoiding unnecessary delay.

Where the application is successful the notification letter will advise the following:-

- The weekly amount and the relevant period of the award
- How, when and to whom the payment will be paid
- The requirement to report any relevant change
- A reminder that a payment should be seen as a short-term emergency fund
- Details of other agencies providing additional help and advice.

When a written notification of the decision made is issued, it will offer the opportunity for the customer to seek a review and clearly give details on whom to contact should they need further help or advice.

### **14. THE RIGHT TO SEEK A REVIEW**

DHP's and Hardship Fund Payments are not payments of Housing Benefit or Council Tax Reduction Scheme and are therefore not subject to the statutory appeals process.

The Benefit Section will operate the following policy for dealing with any requests for a review relating to a refusal to an award, a decision to award a reduced amount, a decision not to backdate an award or a decision that there has been an overpayment of an award.

- A customer, or person nominated by the customer to act on their behalf, such as their appointee or agent, who disagrees with the decision may dispute the decision. A request for review must be delivered in writing to the Benefit Section within one calendar month of the written decision about the amount or change in award being issued to the customer.
- For a review to be considered it is not enough to simply disagree with the decision, the customer will need to provide specific reasons for disagreeing.
- Where appropriate, officers from the Benefit Section will explain the decision to the customer by phone, interview or in writing and will seek to resolve the matter.

- Where an agreement cannot be reached, the case will be referred for review to the Revenues and Benefits Service Manager and Benefit Manager. They will examine all the evidence held and make a decision within 14 days of the referral or as soon as is reasonably practicable.
- Where the Revenues and Benefits Service Manager and Benefit Manager decide not to revise the original decision, the customer will be notified in writing with the reasons for their decision as soon as is reasonably practicable.
- The decision will be deemed as final and binding and may only be challenged via the judicial review process.
- In exceptional circumstances the above time periods may be extended. In deciding whether to extend, the Benefit Section will take into account the customers individual circumstances on a case by case basis. This could include where there is delay in seeking independent advice that was outside the control of the customer.

## **15. CHANGES IN CIRCUMSTANCES**

A customer receiving a DHP and/or Hardship Fund Payment is required to notify the Benefit section immediately of any changes of circumstances which may be relevant to their continuing entitlement to DHP and/or Hardship Fund Payment.

The Benefit Section may need to revise an award where the customer's circumstances have materially changed.

Information received from a customer regarding a change that may affect their Housing Benefit, Universal Credit or Council Tax Reduction Scheme entitlement will be used to review the levels of entitlement to any DHP and/or Hardship Fund Payment received.

## **16. WHEN CAN PAYMENTS BE STOPPED?**

There are instances other than a change of circumstances where a payment can be stopped. These include:-

- if you decide that DHP and/or Hardship Fund Payment are being, and/or have been made because someone has misrepresented or failed to disclose a material fact, fraudulently or otherwise; and/or
- when the customer has been paid as a result of an error.

## **17. FRAUD**

Gedling Borough Council is committed to the fight against fraud in all its forms. A customer who tries to fraudulently claim a DHP and/or Hardship Fund Payment by falsely declaring their circumstances, providing a false statement or evidence in support of their application, may have committed an offence under the Fraud Act 2006. Where the Benefit Section suspects a fraud may have been committed, the matter will be investigated. If fraud is found to have occurred, the payment will be recovered and the Benefit Section may consider imposing a formal sanction or instigating criminal proceedings against the customer.

## **18. OVERPAYMENTS**

### **Discretionary Housing Payments (DHP)**

The Benefit Section will recover a payment where it is decided that it has been made as a result of misrepresentation or failure to disclose a material fact, either fraudulently or otherwise.

The Benefit Section will consider recovering a payment that has been paid as a result of an error made when the claim was determined.

The Benefit Section will recover any deposit, rent in advance or administrative fees that have been paid in advance, where the tenant does not actually take up the tenancy.

DHP's cannot be recovered from ongoing Housing Benefit or Universal Credit. This is unlike Housing Benefit overpayments where there is a regulatory provision to allow recovery from ongoing Housing Benefit. There is also no provision for recovery of overpaid DHPs from other prescribed benefits.

The only method of recovery if a DHP is overpaid is to request repayment of the debt from the claimant. This will be in the form of an invoice. Where an invoice remains outstanding, Gedling Borough Council may choose to use other recovery methods such as debt collection agencies or via the courts to recover the overpayment.

### **Hardship Fund Payments - Council Tax Reduction Scheme**

The Benefit Section will recover a payment where it is decided that it has been made as a result of misrepresentation or failure to disclose a material fact, either fraudulently or otherwise.

The Benefit Section will consider recovering a payment that has been paid as a result of an error made when the claim was determined.

Overpayments of Hardship Fund Payments will be recovered by charging the customers Council Tax account. The customer will be issued with a revised Council

Tax demand notice and the overpayment simply becomes council tax arrears recoverable under council tax law.

## **19. PUBLICITY**

Gedling Borough Council will actively publicise the DHP and Hardship Fund schemes accordingly. This will include:-

Including information regarding the schemes on Gedling Borough Council's website.

Including information on all decision notices issued

Giving advice about the schemes, when a customer come to the offices to discuss a claim.

Proactively assisting vulnerable customers to make applications by, visiting them in their own home where necessary.

Developing and establishing links to ensure awareness of the scheme among staff working in housing options.

Make landlords more aware of the scheme (private landlords, housing associations and Registered Providers)

Work more closely with partners such as Gedling Homes, other Registered Social landlords and the Citizen's Advice Bureau along with any other stakeholders that give advice to customers such as Welfare Rights.

## **20. MONITORING**

Gedling Borough Council is required to monitor how DHP's are being used to support customers affected by the welfare reforms. Gedling Borough Council will need to supply a broad breakdown of their expenditure to the Department for Works and Pensions.

Therefore, following a successful application for a DHP, the Benefit Section will record the main reason for the award, as detailed below:

- i) to support customer affected by the introduction of the benefit cap
- ii) to support customer affected by social sector size criteria reforms
- iii) to support customer affected by Local Housing Allowance reforms
- iv) any other reason

In addition, the amount of DHP's awarded will be monitored to ensure expenditure does not exceed the annual permitted total.

The amount of Hardship Fund Payments awarded will be monitored to ensure expenditure does not exceed the annual budget set.

All claims for a DHP and/or Hardship Fund Payment will be treated equally and fairly in accordance with Gedling Borough Council's Equality Policy.

Gedling Borough Council will endeavour to ensure that no-one who applies for a payment receives less favourable treatment on the grounds of age, disability, gender, religious beliefs, race or sexual orientation.

All policies are subject to regular Equality Impact Assessments.

## Appendix A - Section 1

### Benefit Cap

From September 2013, the total award of household benefit payments for working-age claimants will be capped. For the purposes of applying the benefit cap we define a household as a claimant, their partner and any children they are responsible for and who live with them.

Initially the cap will be applied by Local Authorities through Housing Benefit payments. When a household's total benefit entitlement exceeds the cap the Local Authority will reduce the level of Housing Benefit by the excess amount.

A de-minimus amount of £0.50 will be paid when the reduction of the excess would otherwise remove all payments of Housing Benefit. From October 2013 the cap will be applied through Universal Credit, starting with all new claims for Universal Credit including those migrated from existing benefits.

Total entitlement to benefit payments will be capped at £500 per week for couples and lone parent households. The level of entitlement for single adults will be capped at £350 per week.

For those claiming Universal Credit the cap will be applied for the assessment period, which will be monthly.

There are some exemptions from the cap among benefit recipients. The benefit cap is intended to increase work incentives, therefore we will exempt households that are considered to be "in-work." Claimants in receipt of Housing Benefit will be considered in-work and be exempt from the benefit cap if they are entitled to Working Tax Credit.

Claimants on Universal Credit will be considered to be in-work if they earn more than the prescribed earnings threshold.

Households that are exempt are where someone is in receipt of one or more of the following:

- **Attendance Allowance;**
- **Industrial Injuries Benefit (and equivalent payments made as part of a War Disablement Pension or the Armed Forces Compensation Scheme);**
- **Employment and Support Allowance with a support component. For those on Universal Credit this will be limited capability for work and work-related activity;**
- **Disability Living Allowance or its replacement Personal Independence Payment;**
- **Where a person is not receiving Disability Living Allowance, Attendance Allowance or a War Disablement Pension because they are in hospital or a care home, the exceptions will continue to apply;**
- **War widows and widowers will also be exempt.**

## **Support for those subject to the benefit cap**

The Government is providing additional funding for Discretionary Housing Payments for this purpose.

This additional funding is intended to give short-term, temporary relief to families who may face a variety of challenges which prevent them from being able to move immediately or to help manage families move into more appropriate accommodation.

It is specifically aimed at a number of groups who are likely to be particularly affected by the benefit cap. These include (but are not limited to):

- **Those in supported, exempt or temporary accommodation;**
- **Individuals or families fleeing domestic violence;**
- **Those with kinship care responsibilities;**
- **Individuals or families who cannot move immediately for reasons of health, education or child protection;**
- **Households moving to more appropriate accommodation.**

There will be a number of ways that claimants affected by the cap may re-act to having their Housing Benefit reduced by the benefit cap. The intention is that the majority will move into work and so become exempt from the cap. Some may choose to move whilst others may consider other means by which they might be able to meet any short fall such as trying to negotiate a reduction in their rent or meeting the shortfall from other income or capital.

Those who are affected by the cap will have access to and receive support from Jobcentre Plus and the Work Programme to help them find work. People in receipt of working tax credit will be exempt from the cap.

DHPs can make an important contribution to managing the transition for various customers whilst they make the necessary changes to adapt to the application of the benefit cap. The allocation of this funding reflects the varying impact of this measure on different local authority areas.

## Appendix A - Section 2

### Size criteria in the social rented sector

From April 2013 working-age claimants living in the social rented sector may face a reduction to their eligible rent if they are under-occupying their property. The level of under-occupation is determined by the Local Housing Allowance size criteria (the Shared Accommodation Rate is not applicable, however).

The rates of reduction to the eligible rent for those affected by this measure are:

- **14% where there is under-occupation by 1 bedroom; and**
- **25% where there is under-occupation by 2 or more bedrooms.**

It is expected that most claimants affected by this measure will find ways of making up the shortfall themselves, in order to remain in their existing home.

### Support for those subject to the size criteria measure

The Government has provided an additional £30 million to the DHP budget from 2013/14 in support of this particular measure. This additional resource is intended for those affected by this measure who are unlikely to be able to meet the shortfall and for whom moving to a smaller property may be inappropriate.

It is aimed specifically at two groups - disabled people living in significantly adapted accommodation – including any adaptations made for disabled children; and foster carers, whose housing benefit is reduced because of a bedroom being used by, or kept free for, foster children. The expectation is that this money will be prioritised for these groups.

For claimants living in specially adapted accommodation, it will sometimes be more cost-effective to enable tenants to live in their current accommodation rather than moving them into smaller accommodation which then needs to be adapted.

The Government acknowledges the important work that foster carers do and wants to ensure that they are able to live in property which is of a suitable size to enable them to continue in a fostering role.

The allocation of this additional funding has been done in such a way so as to broadly reflect the impact of this measure.

### **Example 1**

Mr and Mrs Thom rent a four bedroom house from a registered housing provider. They have two children, a girl of 7 and a boy of 5. They receive Housing Benefit to cover the full rent of £90 per week.

Under the new size limit rules they are considered to be under-occupying the house by two bedrooms as the children would be expected to share a room because they are both under ten years old. As they are under-occupying by two bedrooms a 25% reduction of £22.50 would be applied to the eligible rent meaning they would now receive Housing Benefit of £67.50 per week.

Mrs Thom is in a wheelchair and significant adaptations have been made to the property to make it more accessible. If the family moved to a different property that property would then need to be adapted at considerable expense. On receipt of an application for DHP, the panel must decide whether to award a DHP of up to £22.50 a week to enable the family to remain in their current adapted house.

### **Example 2**

Mr and Mrs Chande live in a three bedroom house. They have one daughter of 16 studying for her GCSEs. They are also registered foster carers who regularly have children placed with them for short periods of time.

The size limit rules do not take account of foster children in the calculation of how many bedrooms a household requires. The Chandes would therefore be considered to be under-occupying their house by one room only requiring two rooms, one for themselves and one for their daughter.

The Chandes' rent is £85 plus £10 service charges, £95 all together. £2.50 of the service charges is ineligible so their eligible rent is £92.50. Once the new size limit rules are applied a 14% reduction of £12.95 will be applied to their eligible rent meaning they will receive Housing Benefit of £79.55.

They are having difficulty meeting the shortfall, particularly when between placements, the panel must decide whether to award a DHP of up to £12.95 a week to enable the Chandes to keep their extra bedroom and therefore keep fostering.

In making their decision in both scenarios, the panel must give consideration to:-

- The income and expenditure of each customer, asking for evidence if necessary in support of the claim;
- Any other known circumstances or information surrounding the family which may be relevant;
- Where the decision is to allow an award, the length that award is to be provided for needs to be established and justified.

## **Appendix A - Section 3**

### **Changes to Local Housing Allowance Rates**

Since April 2011, the calculation of Local Housing Allowance rates has been revised and these changes are likely to result in an increase in demand for DHPs, particularly as any protection measures come to an end. The changes are as follows:

- **the five bedroom LHA has been removed so that the maximum rate is for a four bedroom property;**
- **absolute caps for each property size have been introduced as follows:**

**£250 for a one bedroom property**  
**£290 for a two bedroom property**  
**£340 for a three bedroom property**  
**£400 for a four bedroom property**

- **LHA rates are now set at the 30th percentile rather than the median.**

In addition to these changes, from April 2013, Local Housing Allowance rates will be up-rated annually in line with the Consumer Price Index inflation (CPI), instead of being set every month in line with market rents (Retail Price Index – (RPI).

### **Support for those subject to LHA restrictions**

The Government has provided additional funding to the DHP budget, aimed at enabling local authorities to provide additional support to claimants who have been impacted by the changes to Local Housing Allowance.

## **Appendix B**

### **FURTHER EXAMPLES OF GOOD PRACTICE WHEN CONSIDERING A DHP AND/OR HARDSHIP FUND PAYMENT**

The following are examples of good practice (in the form of questions the authority may wish to consider or facts that may be taken into account). The panel will consider these examples in conjunction with **Section 10 – Awarding a payment**, contained within this policy. Each case will be treated individually.

#### **Prevention of homelessness**

Homelessness can have a negative impact for the household concerned in terms of health, education and employment prospects. Also, temporary accommodation used to house the homeless can be expensive. Therefore, early intervention to prevent homelessness should be a key issue for Local Authorities.

- An award would prevent the household from being evicted and thus becoming homeless.
- An award would be central to the person being able to access or maintain employment, education or training and so they are thus less likely to become homeless.
- Paying to households, who have previously been homeless, would help to increase the long-term sustainability of their accommodation.
- Working with homelessness organisations, and those operating rent deposit schemes, as well as your council's homeless section to prevent loss of tenancy

#### **The tenancy**

- Is there scope for the landlord to reduce the rent?
- Can the housing options or homelessness prevention team help the customer to negotiate a lower rent if the customer feels unable to attempt to do so themselves.
- Does the customer have a fixed term tenancy and if so when does this end?
- Can the tenant leave the tenancy without incurring a financial penalty?
- Could the tenant afford the tenancy before they took it on?
- Could a DHP enable the accommodation to become affordable in the interim, allowing the tenant time to find alternative accommodation?

#### **The household's financial circumstances**

Although there are no rules on the financial issues to be taken into account when considering the award, an authority may wish to think about the following.

- Does the customer have other debts to pay?
- Have they sought advice on how to clear their debts?
- Can the customer re-negotiate non-priority debts, such as credit card agreements?
- Is the customer entitled to other welfare benefits and not claiming them?
- Do they have any capital or disregarded income that they could use to make up the shortfall (bearing in mind its intended purpose)?
- Is there anyone else willing to make up the shortfall?
- Can the customer change their spending pattern on non-essential items?
- Is the customer taking long-term action to help their problems in meeting their housing costs?

- Could the customer afford the rent when they moved in?
- Can the customer increase his hours or do any overtime?
- Is the customer in work but with high travel costs, because of split shifts for example?

### **The household's medical circumstances**

An authority may wish to consider whether the following apply.

- Does the household have health or support needs which require them to remain in a particular property?
- Does the household have a health problem which means that the choice of housing is restricted either temporarily or permanently?
- Does the customer require an extra room because of a health problem that affects them or a member of their household?
- Does the household have to live where they do because of the need for access to medical or support services – for example a particular hospital?
- Does the household have extra health-related expenses, such as the need for therapeutic classes or non-prescription medicine?

### **Other circumstances**

There may be other circumstances applying to the customer or a member of their household which an authority may need to take into account.

- Is the customer fleeing domestic violence so they do not have time to shop around for a reasonably priced property?
- Does the household have to live in a particular area because the community gives them support or helps them contribute to the district?
- Is the customer expecting a child and had her Housing Benefit restricted to that of smaller accommodation until the child is born?
- Is the customer a single person who is expecting a child and who would thus no longer be subject to the Single Room Rent once the child is born?
- Is the customer a single person living in an area where there is a shortage of shared accommodation?
- Is the customer a care leaver who has a reduction in their Local Housing Allowance rate after becoming 22 years old?
- Is there a particular reason that the customer chose to live in this accommodation?
- Is the property the cheapest available in the area for the household's needs?
- Does living in the area mean a better chance of employment?
- Would it be helpful to pay an award when a training scheme is almost, but not yet, complete?
- Would it be helpful to pay an award where the household includes children at a critical point in their education?
- Is someone in the household undertaking care duties for relatives in the neighbourhood?
- An authority could consider paying an award to those returning to the workplace as an encouragement for others to do the same.

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