



Policy Briefing
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Policy briefing

**Recommendations for Discretionary Housing
Payments (DHPs) in Northern Ireland pre and post
2020**

August 2018

when everyone has a home

Introduction

About Housing Rights

Housing Rights has been helping people in housing need for over fifty years. As the leading provider of independent specialist housing advice in Northern Ireland, we helped over 11,500 people last year, with almost 43,000 housing issues.

At Housing Rights we provide advice, assistance and advocacy. In addition we support front line practitioners by providing an information and training service. Our policy work is based on the experience of our clients and aims to support the identification of evidence based, user informed solutions.

Our role means that we are perfectly positioned to understand the deficiencies in the current use of Discretionary Housing Payments (DHPs) as well as the need to review and improve their use to better prevent and alleviate homelessness.

About DHPs

DHPs are extra payments made to persons entitled to housing benefit who require further financial assistance to meet their housing costs. DHPs have been in operation in Northern Ireland since 2001.

Their use is governed by the Discretionary Financial Assistance Regulations (NI) 2001 (SR 216 of 2001)¹. The Housing Executive, which oversees DHPs, has produced operational guidance² for their administration.

The limitations of their use

Restrictive criteria

Unlike elsewhere in the United Kingdom, DHPs can only be administered in limited circumstances in Northern Ireland.

¹ Regulation 2 of the Discretionary Financial Assistance Regulations (Northern Ireland) 2001 was updated to make provision for the award of DHPs in relation to the abolition of the Family Premium (by SR 432 of 2016 with effect from 16th January 2017) and in relation to the Benefit Cap (by SR 375 of 2016 with effect from 7th November 2016).

² Current guidance issued in 2017. NIHE (2017) Discretionary Housing Payment (DHP) Policy and Procedures Guide, June 2017

In the private rented sector, anyone whose local housing allowance is restricted and doesn't cover the full rent can apply for a DHP to make up the shortfall. In the social rented sector, DHPs can only be administered to those who are impacted by the abolition of the family premium and those (couples) who are impacted by Benefit Cap and whose supplementary payment does not cover the full shortfall or (singles) who are impacted by the Benefit Cap and do not receive a welfare supplementary payment.³

The Housing Executive was allocated a Discretionary Housing Payments budget of £7.226m for 2017/18. The budget was in line with allocations made to Local Authorities within Great Britain. The spend for 2017/18 on Discretionary Housing Payments amounted to £3.6m with payment made to 15,156 claimants. There is no provision for the Housing Executive to redirect any under spend.

Critically, this money which is intended for the purpose of preventing and alleviating homelessness in Northern Ireland is being lost. Since this funding is allocated to the NIHE in accordance with the budget provide to Local Authorities in GB and any underspend cannot be redirected it is likely that this money would be re-allocated outside of housing to health or education.

This is particularly significant in the context of the recent NI Audit Office report into Homelessness (2017)⁴ which highlighted the fact that loss of temporary accommodation is consistently amongst the top three reasons for homeless presentations in Northern Ireland. Homeless presentations have significant social and economic implications for public expenditure.

Current issues with the use of DHPs

In addition to the restrictions imposed by the Regulations regarding the circumstances in which an application for a DHP can be made, in practice there have been further restrictions imposed in relation to the amount of the award and the duration of the award.

Amount and period awarded

³ Full information about the circumstances in which applications for DHPs can be made can be found on the NIHE website here: https://touch.nihe.gov.uk/discretionary_housing_payments

⁴ NIAO (2017) Northern Ireland Audit Office report on Homelessness accessed at: https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Homelessness%20in%20Northern%20Ireland%20Full%20Report_0.pdf

As the table below identifies however, these restrictions stem largely from operational guidance produced by the NIHE to assist their staff and in all cases further allowance for additional discretion is permitted.

	Discretionary Financial Assistance Regulations 2001 (as amended)	DHP Guidance 2006 (NIHE)	DHP Guidance 2017 (NIHE)
Restriction on amount of DHP award	Regulation 4. restricts maximum award to difference between contractual rent and rent level used to calculate HB / housing cost element of UC	£25 per week	If shortfall is less than £5 per week, no award should be made (unless special circumstances) <i>Rent restriction max: £40 per week</i> <i>Family premium max: £11.34 per week</i> <i>Benefit Cap max: full shortfall between old Benefit Cap amount and new Cap amount which cannot be met through welfare supplementary payment</i>
Restriction on period of DHP award	No restriction. Regulation 5. gives NIHE authority to award for a period it considers appropriate.	13 weeks	2 years (must be reviewed at the end of each financial year) All awards exceeding £12 per week must be reviewed within 6 months
Details of further discretion permitted	n/a	If the District believe that a higher level of award should be made they will be required to clear this with Housing Benefit Policy, giving their	Award greater than £40 can be authorised by HB Manager or Assistant Manager

		reasons for the higher level of award.	Awards can be granted for longer than 2 years by HB Managers or Assistant Managers (on further application)
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Despite this discretion, it has been the experience of Housing Rights’ advisers that whilst there appears to be an increase in DHP applications being successful, the amount and duration of the awards remains low (for example £5 per week for 12 weeks).

In limited cases, Housing Rights’ advisers have seen awards made for longer periods and for slightly higher amounts. Even these cases however, do not represent awards made by the NIHE to be at the maximum level permitted under the NIHE guidance.

Case study 1:

Housing Rights’ client is a private rented tenant living alone in a property for over 17 years. With additional mental health needs the client is in receipt of Disability Living Allowance for depression, anxiety and PTSD. The client is not in employment and is in receipt of full Housing Benefit. She does not have any other savings and no other income outside her benefit entitlements. When she approached Housing Rights she was at risk of eviction due to arrears which had accrued following the end of her last DHP award.

Due to both the client’s mental health needs and the long period of her tenancy, the client stated that to move property away from her well established support network would cause her significant distress.

The client had a shortfall of £26 per week and made an application for a DHP in July 2018.

Under the NIHE DHP guidance, the NIHE had the authority to make an award of the full amount of the shortfall (£26) for a period of up to 2 years.

Despite this, the NIHE awarded a DHP in the amount of £10 per week for 9 months from July 2018 until March 2019.

Housing Rights recognises that historically the DHP budget has been under significant pressure and that in this context it was appropriate to make awards within tight parameters to make best use of resources. Given the current position, with a significant underspend, however, Housing Rights recommends

that urgent consideration is given to maximising the impact of DHP awards to prevent and alleviate homelessness. It is our understanding that whilst this option may be short term, failure to do so, will result in these monies being lost from housing.

Need for additional promotion

Notwithstanding the issues relating to the amount and period for which DHP applications are awarded, Housing Rights view the opportunity presented by the underspend in this budget to warrant consideration of the need for additional promotion of DHPs to maximize their use to prevent and alleviate homelessness.

Even under the current DHP system, support could be improved. Whilst increasing the circumstances in which DHPs can be paid would likely require an amendment to the Discretionary Financial Assistance Regulations, there are practical measures which can be put in place to increase access to DHPs now, which do not require an Assembly or legislative change.

For example, in England, the DHP Good Practice Guide recommends Local Authorities point to the availability of DHPs when contacting claimants who are due to be affected by a benefit decision. Housing Rights recognises that housing benefit award letters now include reference to Discretionary Housing Payments, however as DHPs are highlighted on the overleaf of the letter, it may not be noticed by the client. Additional efforts should be made to increase access to DHPs, particularly for those in the private rented sector through promotion. It may be appropriate to consider requesting that the Behavioral Insights team review these letters to ensure the format and content encourages tenants to apply for DHPs.

Furthermore, Housing Rights would welcome consideration by the Department and the NIHE of any additional ways to maximize access to DHPs for those in need. The success of initiatives such as 'Make the Call' clearly identifies that with appropriate promotion, access to additional support can be improved.

Future issues with the use of DHPs

Assessing the use of DHPs in the context of the introduction of Universal Credit

Universal Credit is currently being introduced in Northern Ireland on a phased geographical rollout basis. Notwithstanding any additional housing impacts which may be generated with the introduction of Universal Credit, Housing Rights is concerned that the design of this benefit removes certain safeguards which existed under Housing Benefit. The removal, or in some cases the weakening of these safeguards, will make it more difficult to sustain tenancies and prevent homelessness. The future use of DHPs should be considered in this context.

The case study below illustrates how the use of safeguards such as income shock protection assisted in safeguarding tenancies. Income Shock protection does not exist under Universal Credit.

Case study 2:

Client was a father, aged 33, with access to 2 children. Client was residing in a 2 bedroom PRS property. Client was employed as a chef for the past 15 years and was paying full rent of £110 per week. Restaurant closed down overnight and father had to go on Jobseekers Allowance and had to apply for Housing Benefit. Client discovered he would only be entitled to Shared Accommodation Rate of approx. £45 per week, facing a £65 shortfall to make up out of other benefits. Understandably, this was unaffordable for client. Client faced eviction and ex-partner threatened to apply to remove access. Government rules had determined in the client's circumstances financing shared accommodation is proportionate. Housing Rights intervened and applied for "13 week income shock protection" under Housing Benefit, which meant his full contractual rent could be paid, this safeguarded his tenancy while he looked for new employment. Client obtained employment after 15 weeks. A small DHP was applied for during the 2 weeks of Shared Accommodation Rate; while the DHP paid £30, this still left client with shortfall of £35 per week. Client accrued an arrear during this time. Fortunately re-employment alleviated this client's situation.

Other safeguards which existed under Housing Benefit which have been removed or weakened under Universal Credit include; overlap and death protection Overlap payment; when Housing Benefit is provided to maintain two properties to allow rent to be covered in a new property while a notice period expires in a former property has been removed with the introduction of Universal Credit. Death protection; when Housing Benefit is provided to someone whose partner or child (who is part of their Housing Benefit claim) dies, payment continues for 12 months to give breathing space. Under Universal Credit this payment is reduced to 3 months.

Assessing the use of DHPs in the context of the Social Sector Size Criteria (SSSC)

In Northern Ireland special arrangements have been made to make additional payments to those impacted by certain welfare reforms. These mitigation arrangements, which include additional payments to some social tenants impacted by the SSSC are, however, due to expire in 2020.

The following is a summary of a recent case Housing Rights assisted on which underlines the restrictive criteria which governs the use of DHPs in Northern Ireland.

This case also identifies a future need to review the use of DHPs to allow use for long term awards and to ensure that the operation of the Social Sector Size Criteria in Northern Ireland does not unfairly discriminate against people with disabilities.

Case study 3:

Housing Rights' client was awarded a 3 bedroom property following a homeless presentation to NIHE. Couple and dependant – child suffers from extreme autism and associated conditions.

The new 3 bedroom property was provided following medical recommendations – child required additional safe room/quiet room during periods when his episodes occurred. He was often aggressive and a danger to himself and others. Room had reinforced glass, door position changed etc. Client was subsequently assessed as impacted by SSSC due to this extra room. Our client was in receipt of a welfare supplementary payment to make up the shortfall in Housing Benefit caused by the bedroom tax.

However they contacted us as they were concerned that this payment would run out in 2020 and there was no other support available to help them make up the shortfall in housing benefit caused by the SSSC.

Housing Rights lodged an appeal against this decision on 2 grounds

1) The main ground was that the operation of the bedroom tax here was discriminatory. The child needed this extra room due to his medical conditions / disability. In England and Wales, our client could have applied for a DHP to make up the shortfall in rent which was currently being met through a supplementary payment, but which was due to expire in 2020. In NI, this option wasn't open to them.

2) *Further grounds of challenge– need for carer and failure by NIHE to assess a rent rebate due to adaptations which would have meant an exemption from SSSC.*

NIHE has been very sympathetic and it has proceeded to issue supersession decision. Assessed client as not impacted by SSSC due to need for overnight carer. As the client is now not deemed to be under occupying, there will be no reduction in their benefit and no need for a supplementary payment. The outcome is therefore excellent for the client but it raises concern for us as it demonstrates that there are gaps in our DHP policy.

Impact on people with disabilities

This point is also significant because of the ruling of the Supreme Court in this area. In 2016, the Supreme Court issued judgments regarding the discriminatory impact of the so called bedroom tax on people with disabilities⁵. Whilst there were certain cases in which the Court ruled that the impact of the bedroom tax was unjustified, and for which changes to the policy have been made. Generally speaking however, the Supreme Court ruled that the impact of this policy on those with disabilities is discriminatory, but that such discrimination is justified as these claimants can seek protection from DHPs. In Northern Ireland, as this case demonstrates, this safety net does not currently exist.

Given the proposed end of mitigation payments to people (including those who may over occupy as a consequence of their home having been adapted to meet needs presented by a disability) impacted by the SSSC, in 2020, there is a need to review the use of DHPs.

Long term awards

Similarly, despite operational guidance relating to the operation of DHPs emphasising the short term use of DHPs, there is a recognised long term need for certain tenants. The above case study is an example of one such client group who may require a long term award. For households who can't move due to the adapted nature of their accommodation but who cannot meet the costs of their

⁵ Supreme Court judgment in respect of R (on the application of Carmichael and Rourke) (formerly known as MA and others) (Appellants) v Secretary of State for Work and Pensions (Respondent) R (on the application of Daly and others) (formerly known as MA and others) (Appellants) v Secretary of State for Work and Pensions (Respondent) R (on the application of A) (Respondent/Cross-Appellant) v Secretary of State for Work and Pensions (Appellant/CrossRespondent) R (on the application of Rutherford and another) (Respondents) v Secretary of State for Work and Pensions (Appellant) [2016] UKSC 58

accommodation, repeat applications for DHPs to sustain their tenancy are a source of anxiety.

Evidence supplied to the Work & Pensions Committee and referenced in a briefing paper produced by the House of Commons in 2017, identifies the reluctance of some local authorities in England to grant DHPs to claimants who didn't have 'an exit strategy'. Despite increased funding provided for DHPs, the lack of strong and explicit guidance has prevented local authorities from having the confidence to make long term awards. It is imperative therefore that guidance issued in relation to this issue in Northern Ireland is clear and robust. Housing Rights recommends that statutory guidance is most appropriate.

Recommendations

1. In the short term, consideration should also be given to how to maximise the use of DHPs even within the parameters allowed by the current regulation.

As discussed above, this should include consideration of increasing award amounts and the periods for which awards are made, as permitted within the regulation. Even if these increases are made in the short term, within the parameters of the DHP budget, opportunities to prevent and alleviate homelessness can be maximised.

There is a further opportunity to increase the applications made for DHPs by considering best practice and new solutions to promoting DHPs.

In both instances no changes in regulation or operational policy are required.

2. In the medium term, the Department and the Housing Executive should establish a housing led review of DHPs to ensure their operation is fit for purpose, future proofed and linked to clear policy objectives so their use can be evaluated.

Given the critical role played by DHPs in preventing and alleviating homelessness, it is imperative that any review of their use is housing led and that key stakeholders are involved.

This review should include assessment of the current regulation with a view to making necessary amendments, the production of statutory guidance and the identification of clear policy objectives which govern the use of DHPs. It is particularly

important that this work is carried out in light of the Department's proposals to discharge the statutory duty to homeless people by placing them in the private rented sector,

Setting policy objectives for DHPs to ensure their use can be evaluated

A recent report by the National Audit Office on Homelessness (2017) criticised the Department for Communities and Local Government (DCLG) which had significantly increased the funding available for DHPs but which had not '*evaluated how effectively local authorities are using DHP in tackling homelessness*'⁶.

This report which assessed DCLG's role was issued in a similar period to a report by the Northern Ireland Audit Office which also assessed the Department and the NIHE's role in tackling homelessness. It is notable that following this report, the Northern Ireland Audit Office has been carrying out a further report into Welfare Reform, due to be published in Autumn 2018.

In reviewing the operation of DHPs in Northern Ireland and in light of the reports completed by the NIAO and the NAO, consideration therefore ought to be given to how the NIHE can evaluate the use of DHPs in preventing and alleviating homelessness. In order to do so, it is critical to clearly articulate the policy objectives attached to their use.

In Housing Rights' view the policy objectives are aligned to their role in preventing and alleviating homelessness and ought to be linked both to the Programme for Government (specifically indicator 8 Number of Households in Housing Stress) and the NIHE's Homeless Strategy.

Only once clear policy objectives have been set can data be collected to evaluate the use of DHPs (and the expenditure associated with their use) in the context of homelessness prevention and alleviation.

For further information on this briefing, please contact Kate McCauley, Policy & Practice Manager by email at kate@housingrights.org.uk

⁶ NAO (2017) National Audit Office report on Homelessness, p.24 accessed at: <https://www.nao.org.uk/wp-content/uploads/2017/09/Homelessness.pdf>