

# **Discretionary Housing Payments guidance manual**

May 2022

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## **Section 1: Manual purpose**

1. This guidance manual is for local authorities (LAs) in England and Wales who are responsible for administering Discretionary Housing Payments (DHPs). DHPs have been fully devolved in Scotland since 2017.
2. It provides guidance and advice on good practice when considering payment of DHPs and updates the previous guidance issued in January 2021.

## **Section 2: About Discretionary Housing Payments**

### **What are Discretionary Housing Payments?**

3. DHPs provide financial support towards housing costs and are paid by an LA when they are satisfied that a claimant needs further financial assistance with housing costs and is in receipt of either:
  - Housing Benefit (HB) or
  - Universal Credit (UC) with housing costs towards rental liability.
4. Owner-occupiers are not eligible to receive DHPs, with the exception of Shared Ownership properties which carry a rental liability.

### **What we mean by ‘housing costs’**

5. ‘Housing costs’ are not defined in the Discretionary Financial Assistance (DFA) Regulations 2001 and this approach purposely allows broad discretion for interpretation. In general, ‘housing costs’ usually refers to rental liability, as well as:
  - rent in advance
  - deposits
  - other lump sum costs associated with a housing need such as removal costs.

### **What we mean by ‘further financial assistance’**

6. The phrase ‘further financial assistance’ is not defined in law. LAs may interpret the phrase however they wish; taking into consideration the claimant’s financial circumstances and any other relevant factors.
7. However, in most cases, a claimant will need to demonstrate that they are unable to meet housing costs from their available income or that they have a shortfall in meeting their housing costs.

## What DHPs can cover

8. DHPs can cover a rental deposit, rent in advance, costs associated with taking up a new tenancy for example, removal costs.
9. DHPs can also cover shortfalls between housing support and actual rental costs, for example, where benefit cap or Removal of the Spare Room Subsidy (RSRS) deductions are applied. See **Annex A – Benefit cap and RSRS policy** for more information.

## What DHPs cannot cover

10. There are certain elements of a claimant's rent that the HB and UC regulations exclude so they cannot be included as 'housing costs' for the purposes of a DHP. See **Annex B - What DHPs cannot cover** for more details.

## When can a DHP be awarded?

11. A DHP can only be awarded once a claimant is in receipt of either:
  - HB, or
  - the housing element of UC and the end of the first assessment period has passed.

## The level of a DHP award

12. The Discretionary Financial Assistance Regulations 2001 (regulation 4) require that the level of DHP does not exceed the weekly HB or UC housing element.
13. Regard should be given to the Court of Appeal's decision in R v. LB Lambeth, ex parte Gargett which sets out that any HB already paid towards 'housing costs' must be deducted when calculating the amount of a DHP to avoid duplicate provision. See **Legal considerations at Annex C** for more information.

## Length of payments

14. The length of time over which a payment is made is at the discretion of the LA.
15. The period of the award and, importantly, any specific end date, should be made clear to the claimant. LAs may also want to provide information on how to re-apply for a DHP if necessary.
16. If the DHP is to meet a one-off housing cost such as a deposit or rent in advance, there is no requirement to specify the period of the award.

17. An LA can consider making longer term awards where appropriate, for example where a claimant has on-going needs, such as a disabled person living in specially adapted accommodation.

### **Rent deposits and rent in advance**

18. A DHP can be awarded for a rent deposit or rent in advance for a property that the claimant is yet to move in to if they are already entitled to HB or the housing element of UC at their present home. Regard should be given to the Court of Appeal's decision in R v. LB Lambeth, ex parte Gargett which sets out that any HB already paid towards 'housing costs' must be deducted when calculating the amount of a DHP to avoid duplicate provision. See **Annex C – Legal considerations** for more information.

### **Backdating**

19. When deciding whether to backdate a DHP, each application should be considered on its own merits.
20. The DFA regulations require that a DHP can **only** be considered for a period where the linked HB or relevant award of UC is payable. This is of particular relevance to requests for a period of backdated DHP, since backdating cannot cover arrears accrued while not in receipt of these benefits.

### **Section 3: Funding**

21. LAs can use their own funds to top up their government contribution by a maximum of two and a half times this figure. Once an LA's overall cash limit is met, no additional DHPs can be awarded within that tax year. If awards are made above this limit, the LA will be breaking the law.
22. Any unspent DHP funding from the government contribution is returned to the department at the end of the financial year.

### **Section 4: The application process**

23. The regulations require that there must be an application for a DHP before an LA can consider making a payment.
24. Each LA can decide how the application process will operate. If an LA decides not to use a paper form, other methods can be considered such as electronic, telephone, online application or face to face claimant interviews.

### **Information a claimant must provide**

25. In order to apply for a DHP, the claimant must provide any information the LA needs to make a decision, for example, details of income, capital and expenditure.

26. When deciding how to treat income from disability-related benefits such as Disability Living Allowance (DLA) or the Personal Independence Payment (PIP), LAs must have regard to the decision of the High Court in R v. Sandwell MBC, ex parte Hardy. This decision places an obligation on LAs to consider each DHP application on a case-by-case basis having regard to each component of the benefits in payment, the purpose of those disability related benefits and whether the money from those benefits has been committed to other liabilities associated with disability. See **Annex C – Legal considerations** for more information.

### **Can another person make a claim on behalf of the claimant?**

27. If reasonable in the circumstances, for example, if a claimant is vulnerable and requires support, an application can be accepted from someone acting on behalf of the claimant such as an [appointee](#)

### **Can DHPs be awarded to people who have two homes?**

28. The regulations allow for a DHP to be awarded in respect of two homes when someone is treated as temporarily absent from their main home. This includes those who have fled their main home because they are a victim of domestic abuse. Further information can be found in the [Housing Benefit Regulations 2006 \(S.I. 2006/213\)](#) or [Universal Credit Regulations 2013 \(S.I. 2013/376\)](#) for the time restrictions on these provisions.
29. In such cases of temporary absence, if the claimant is treated as liable for rent on both properties and, in both cases, there is a shortfall, it is possible to award a DHP in respect of both properties subject to the weekly or monthly limit on each property.

### **Delivering the decision**

30. You must inform the claimant of the DHP decision either in writing or electronically (if the claimant has agreed to this). This information should include appropriate explanations and/or any reasons for non-payment.
31. This must be done as soon as is reasonably practicable. LAs must be consistent and avoid unnecessary delay, considering that an application for DHPs is often to deal with an immediate need.

### **Review process**

32. When issuing a decision, LAs should provide information about the process in place for reviewing the decision.
33. An LA may decide who in the authority reviews a decision. There is no requirement that the review arrangements take any format as long as the authority is consistent and the original decision maker is not involved.

34. A decision on a DHP does not carry a right of appeal to a Social Security Tribunal. The route of judicial review is available; and a complaint may be made to the Local Government and Social Care Ombudsman if there is an allegation of maladministration.
35. The claimant should be notified of any review outcome in writing, including reasons, as soon as is reasonably practical.

## **Section 5: Payment of DHPs**

### **Method of payment**

36. DHPs may be delivered through HB payment systems and may also be paid alongside HB payments. However, there must be a clear audit trail that allows LAs to differentiate, in any given case, between HB and DHPs.
37. If a DHP is paid with HB, notifications to the claimant must clearly show the amount of HB and the amount of DHP.
38. When DHP is awarded to a UC claimant, LAs may consider paying it at the same time as the monthly UC payment.

### **Can another person receive payment for a DHP on behalf of the claimant?**

39. A DHP may be paid to someone other than the claimant if the LA feels this is reasonable; that could be an agent, an appointee, or a landlord. However, consideration should be given to risk of fraud.
40. In the case of a person who is entitled to rent rebate, DHPs can be credited to the rent account.

## **Section 6: After an award has been made**

### **Change of circumstances**

41. A claimant receiving a DHP must notify the LA of any change of circumstances which may be relevant to their DHP application or award.
42. The LA must ensure that the claimant is aware of the changes they should report. There is no statutory timescale for notification, however, claimants should be advised to notify of changes as soon as reasonably practicable. It is for each LA to decide how such changes are notified.

### **Stopping DHP payments**

43. There are instances when a DHP can be stopped before the end date already indicated to the claimant: These are if:

- The LA decides that a DHP is being, and/or has been, made because a claimant has misrepresented or failed, fraudulently or otherwise, to disclose a material fact.
- The claimant has been paid because of an error.
- A claimant no longer needs further financial assistance towards housing costs.

### **Recovering overpaid DHPs**

44. The DFA regulations state a DHP award can **only** be recovered if your LA decides that payment has been made because of either:

- a misrepresentation or failure to disclose a material fact by the claimant (either fraudulently or otherwise)
- an error made when the application was determined.

### **Section 7: Budgeting**

45. As the DHP scheme has been in place for some years, LAs are likely to have built up expertise and local knowledge; enabling the DHP budget to be profiled to meet demand over the course of the year.

46. You may want to explore what other funding is available for providing assistance in your local area where there may be some overlap with DHPs in what it can be used for, such as help with removal costs.

47. You may also be able to reduce some demand by offering claimants alternative support and advice in advance of considering whether a DHP is appropriate, this may include support through the Money and Pensions Service.

### **Section 8: DWP monitoring**

48. Since April 2013, DWP has monitored how DHPs are being used to support claimants affected by the Welfare Reforms. This monitoring information continues to improve the department's understanding of how DHPs are being used.

49. The department requests information on DHPs at specific times during the financial year, including expenditure and number of awards.

50. Some of this information, such as the financial forecast and actual expenditure at mid-year and end of year, is mandatory. Other information is voluntary.

### **DHP mid-year estimate and final claim forms**

51. The Discretionary Housing Payments (Grants) Order 2001 (S.I. 2001/2340), amended by The Income-related Benefits (Subsidy to Authorities) and

Discretionary Housing Payments (Grants) Amendment Order 2021 (S.I. 2021/2031), places a legal obligation on LAs to submit forms providing details of DHP expenditure within a financial year.

52. Two forms must be submitted each financial year; a mid-year estimate form by 31 October and a final DHP claim form by 30 April of the following year. LAs is required to complete and return the forms to the department by the required deadline.
53. In addition to providing details of DHP expenditure, the forms also ask LAs to report voluntary monitoring information.
54. The mid-year estimate and final DHP claim forms are the mechanism by which DHP funding is provided to LAs. The forms contain an LA certificate which must be signed by the Responsible Finance Officer within each LA who is designated as such under Section 151 of the Local Government Act 1972. The Responsible Finance Officer must certify that all entries on the forms are accurate and expenditure has been incurred in accordance with this guidance and the regulations governing DHPs.
55. The deadline of 30 April for the final DHP claim form is a critical deadline across government as it allows for faster closure of accounts as required by HM Treasury.

## **Section 9: Publicising DHPs**

56. It is important to publicise the existence of DHPs. They are a key element of the government's support for housing costs and are an important tool to support people experiencing temporary pressure or in enabling a move to more sustainable and affordable accommodation.
57. We recommend that LAs point to the availability of DHPs when contacting claimants who are due to be potentially affected by a particular deduction or shortfall.
58. To raise awareness of DHPs, your LA may wish to consider:
  - including information on all HB decision notices where there is a shortfall
  - leaflets and posters
  - giving advice on DHPs when people contact your LA to discuss a claim
  - proactively assisting vulnerable claimants to make applications by, for example, visiting them in their own homes
  - ensuring that domestic abuse victims who are trying to move to a place of safety through contact with external welfare organisations and refuges are supported
  - informing external and internal bodies that give advice (money advice, welfare rights, homelessness, housing, etc.) of the existence of DHPs

- establishing and maintaining links to ensure awareness of the scheme among staff working in housing options, homelessness and adult and children's services
- including DHP advice as part of general welfare advice services
- making landlords aware of the scheme (private landlords, housing associations and registered providers)
- establishing links with social housing tenants and resident's organisations to ask them to help raise awareness of the scheme
- raising awareness by having information of the scheme available at tenants and residents' forums
- including clear DHP eligibility requirements, application and appeal information on your LA website, ensuring it is visible and easily accessible to both HB and UC claimants
- information on Choice Based Lettings scheme websites
- information within literature or communications relevant to housing allocations policies or placements
- raise awareness through interviews with local radio, including stations targeting different ethnic groups
- targeted communications aimed at those likely to be affected by telephone, text message or social media (such as Twitter).

## **Section 10: Priority groups**

59. LAs will need to consider how best to target the funding within priority groups, whilst remembering that each case must be considered on its own individual merits.

60. You may wish to assist certain groups to stay in their home, for example:

- people who have had to flee domestic abuse or have moved because of the threat of violence in another area
- people affected by domestic abuse who remain in a property which has been adapted under a sanctuary scheme
- families with children at a critical point in their education
- young people leaving LA care until they reach the age of 35
- families with kinship care arrangements. Children who go into the care of family and friends are often extremely vulnerable and will usually benefit from the stability of remaining in a familiar area and continuing to attend their local school; if the current housing is not an appropriate size for kinship care families, you may want to assist in ensuring they are able to move to appropriate housing in their local area
- families with a child temporarily in care but who is expected to return home. What constitutes temporary will be at the discretion of your LA
- families with a social services intervention, for example highly dependent adults, children at risk or involvement in a family intervention project
- families with a disabled child not in receipt of upper or middle rate DLA but whose condition makes sharing a bedroom difficult

- couples who are unable to share a bedroom due to disabilities but are not in receipt of a qualifying benefit
- families who are providing long term care to a disabled child or non-dependant
- people with shared care arrangements; the person who does not received the Child Benefit will not receive calculations for the children in their housing entitlement
- people who are providing a room for an adult placement
- people who are victims of human trafficking
- where someone in the household is expecting a baby (including those currently in shared accommodation or subject to an under-occupation reduction)
- where a household contains a young child, specifically a child aged 9 months and under, or a child aged under two years of age where childcare is a barrier to getting work
- where a child in the household is due to reach a significant birthday which means an additional bedroom will be allowed under the size criteria
- claimants or their partners who are due to reach State Pension age which means they will no longer be subject to an under-occupation reduction
- people who have experienced homelessness being supported to settle in the community
- people with health or medical problems, either physical or mental, who need access to local medical services or support that might not be available elsewhere
- disabled people who need, or have had, significant adaptations made to their property, or where they are living in a property particularly suited to their needs. This includes properties which have been adapted for other members of the household, such as disabled children or non-dependants
- where the claimant or someone in their household has an impairment, which requires them to have a larger property than would usually be the case for the size of their household due to, for example, where a bedroom is used for storage of medical equipment or used to support their disability for example, sensory room
- disabled people who receive informal care and support in their current neighbourhood from family and friends, which would not be available in a new area. In this respect, you may also consider families who have a child with an impairment who rely heavily on local support networks
- the elderly or frail who have lived in the area for a long time and would find it difficult to establish support networks in a new area
- people who need to live near their jobs because they work unsocial hours or split shifts; or where moving home may mean living in an area where public transport would be inadequate to enable them to sustain their current job
- people who are refugees who need to maintain stability in their financial and housing circumstances
- single, under 35-year-olds who may find it difficult to live in shared accommodation, for example, due to a traumatic event.

## Section 11: Working with other LAs

61. It may be helpful to consider working with neighbouring LAs if claimants could be more likely to find accommodation in another area.
62. LAs will need to be mindful that if a claimant, in receipt of HB, moves to another area, they will not be able to make a new claim to HB and will need to apply for UC to get support for housing costs. For example:
- agreeing that the exporting LA (the LA the claimant is moving away from) will meet the cost of rent in advance and deposit for a property, or help with removal costs (if there is a need to do so through DHPs) to avoid the need for an ongoing award
  - having mechanisms in place to ensure that the new LA is aware that such an award has been made
  - discussing availability of accommodation and other services such as school places
  - involving homelessness prevention teams, other housing advice teams or partner housing associations in these discussions
  - agreeing that the importing LA may award DHPs to help with travel to work if these costs are increased because of the move.
63. The LA that the claimant is looking to move out of must provide DHP support, not the LA the claimant is hoping to move into.
64. If claimants from neighbouring areas are likely to be moving into your LA area, have discussions taken place with other departments on possible increases in demand, for example, on school places or social services support?

## **Annex A: Benefit cap and Removal of the Spare Room Subsidy policy**

1. Since April 2013 the total amount of benefit paid to Working Age claimants has been subject to a cap. The benefit cap is applied either through Housing Benefit (HB) or Universal Credit (UC), as appropriate. 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.
2. The benefit cap is applied by local authorities (LAs) through HB payments. When a household's total benefit entitlement exceeds the benefit cap level, the LA reduces the level of HB by the excess amount.
3. A minimum amount of £0.50 is kept in payment when the reduction of the excess would otherwise remove all payments of HB.
4. Where UC is in payment the benefit cap is applied through UC.
5. From 7 November 2016 the annual amounts at which benefits are capped were tapered to:
  - £23,000 in Greater London and £20,000 in the rest of Great Britain for couples and lone parents
  - £15,410 in Greater London and £13,400 in the rest of Great Britain for single childless households
6. For those on HB, this equates to £442.31 per week in Greater London and £384.62 per week elsewhere in Great Britain for couples and lone parent households. The levels for single adults without children are £296.35 per week in Greater London and £257.69 per week elsewhere in Great Britain.
7. For those getting UC, the benefit cap is applied over the monthly assessment period. The monthly equivalent limits are £1,916.67 in Greater London and £1,666.67 elsewhere in Great Britain for couples and lone parent households and £1,284.17 in Greater London and £1,116.67 elsewhere in Great Britain for single households without children.
8. LAs are provided with information which identifies capped claimants alongside other data that is shared to support claimants who may be eligible for the Council Tax Reduction Scheme. LAs can use this information to proactively support claimants to whom the benefit cap has been applied.

### **Exemptions**

9. The benefit cap provides a strong work incentive and fairness for hard-working taxpaying households and encourages people to move into work, where possible, whilst continuing to support the most vulnerable.

10. There are some exemptions from the cap for certain benefit recipients:

- Households in receipt of HB who are entitled to Working Tax Credit (WTC) are exempt.
- Lone parents can qualify for WTC by working 16 hours or more per week
- Couples with children must work 24 hours or more a week (including one working at least 16)
- Those without children must be 25 years old or above and work 30 hours or more a week.
- The in-work exemption in UC applies to claimants earning a set amount or more a month. The in-work exemption applies when a claimant's monthly earnings (or if a couple - their combined earnings) are equal to or above the earnings threshold, for which [up-to-date figures](http://www.gov.uk) can be found on [www.gov.uk](http://www.gov.uk)
- Households are also exempt from the benefit cap when someone is in receipt of:
  - Industrial Injuries Benefit
  - Disability Living Allowance (DLA) (\* see below)
  - Personal Independence Payment (PIP) (\*see below)
  - War Pensions (\*see below)
  - Attendance Allowance
  - Armed Forces Independence Payment (Armed Forces and Reserve Forces Compensation Scheme)
  - Child Disability Payment (in Scotland)
  - Employment and Support Allowance (that includes the support component)
  - An award of Universal Credit that includes an additional amount for limited capability for work and work-related activity
  - Carer's Allowance (CA) or an award of UC that includes an additional amount for carers
  - Guardian's Allowance
  - War Widow's or War Widowers Pension.

\*Where a person is not receiving DLA, Attendance Allowance or a War Disablement Pension because they are in hospital or a care home, the exemption will continue to apply.

11. There is a grace period of 39 weeks, or nine months in UC, for those claimants who have been in work for the previous 12 months. This allows people time to find alternative employment or consider other options to avoid the impacts of the benefit cap.

12. HB paid to UC households living in specified or temporary accommodation is exempt from the benefit cap. These households are not exempt from the benefit cap in UC, rather their HB is not included in the UC calculation. The benefit cap applies in the normal way to HB claimants in specified or temporary accommodation who are not also entitled to UC.

## **Support for those affected by the benefit cap**

13. The government has provided additional funding for DHPs to support claimants affected by the benefit cap who, as a result of several complex challenges, cannot immediately move into work or more affordable accommodation.
14. The funding for DHPs is specifically aimed at several groups who are likely to be affected by the benefit cap. These include (but are not limited to):
  - those in temporary accommodation
  - individuals or families fleeing domestic abuse
  - those with kinship care responsibilities
  - individuals or families who cannot move immediately for reasons of health, education or child protection
  - households moving to or having difficulty finding more appropriate accommodation.
  - those with dual liability for housing costs
  - women within 11 weeks of the expected week of childbirth
  - households containing a young child, specifically a child aged nine-months and under, or a child aged under two years of age where childcare is a barrier to getting work
  - resettlement refugees.
15. There will be several ways that claimants affected by the benefit cap may react to having their HB or UC reduced. The intention is that the majority will move into work and so become exempt from the benefit 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.
16. Those that are affected by the benefit cap will continue to have access to and receive support from work coaches in Jobcentre Plus to help them find work. People in receipt of WTC, or in UC who earn above the current earnings threshold, are exempt from the benefit cap.
17. DHPs can make an important contribution to managing the transition for claimants whilst they make the necessary changes to adapt to the application of the benefit cap. It is important to note that there will not be enough funding to meet every shortfall as a result of the benefit cap so your LA will need to target this funding at those who need it most. The allocation of this funding reflects the varying impact of this measure on different LA areas.
18. There may be circumstances when DHP is awarded and a subsequent successful application for an exempting benefit that is awarded retrospectively means the HB is paid again. The Department for Work and Pensions recommends that when deciding whether it is reasonable to make a DHP, your

LA considers the risk of eviction if arrears arise that may subsequently be covered by HB. For example, the risk may be very low for LA tenants and low for others with a good payment record but less so for claimants renting in the private sector.

### **The Removal of the Spare Room Subsidy policy**

19. Working Age claimants living in the social rented sector face a reduction to their eligible rent if they under-occupy their property. The level of under-occupation is determined by size criteria rules which calculate how many bedrooms are required for a household. These criteria are also used in the private rented sector. The rates of reduction to the eligible rent for those affected by this policy are:

- 14 per cent where there is under-occupation by one bedroom; and
- 25 per cent where there is under-occupation by two or more bedrooms.

20. The department continues to expect that most claimants affected by this measure will find ways of making up the shortfall themselves, to remain in their existing home.

21. The department would encourage all LAs to continue their work of engaging with affected claimants to identify effective ways of mitigating the effects of any reduction in entitlement.

### **Support for disabled people living in significantly adapted accommodation**

22. For claimants living in specially adapted accommodation, it will sometimes be more cost-effective for them to remain in their current accommodation rather than moving them into smaller accommodation which needs to be adapted. Therefore, the department recommends that LAs identify people who fall into this group and invite an application for a DHP.

23. In addition, LAs should consider DHP awards for claimants living in properties that have been significantly adapted for other household members such as for a disabled child or non-dependant.

24. There is no definition of significantly adapted accommodation. It is up to each LA to decide what constitutes significantly adapted accommodation, based on claimant need and local knowledge.

## **Annex B: What DHPs cannot cover**

1. The Discretionary Financial Assistance Regulations 2001 precludes the following elements of rent, and shortfalls in HB or UC, from being met by a DHP:

### **Ineligible charges**

2. Service charges which are ineligible for HB cannot be covered by a DHP. These are as specified in Schedule 1 to the Housing Benefit Regulations and Schedule 1 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations. Examples of ineligible services charges are charges in respect of:
  - the acquisition of furniture or household equipment; and
  - the use of such furniture or equipment where that furniture or household equipment will become the property of the claimant by virtue of an agreement with the landlord.
  - Charges for water, sewerage, and environmental services – as defined and calculated under the HB provisions. The service charge rules for UC can be found in the Universal Credit Regulations 2013, Schedule 1.

### **Increases in rent due to outstanding rent arrears**

3. Under Regulation 11(3) of the Housing Benefit Regulations and Regulation 11(2) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations, where a claimant's rent is increased on account of outstanding arrears owed by the claimant in respect of their current or former property, the shortfall cannot be covered by a DHP.

### **Sanctions and reductions in benefit**

4. 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(IB)) 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(IB).
  - reduction in benefit as a result of non-attendance at a work-focused interview. This applies both where the person's HB is reduced and when any other benefit that the person is receiving (such as IS) is subject to a sanction.
  - 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 unemployment 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.

- 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 employment voluntarily or failing to attend a prescribed training scheme
- restriction in benefit due to a breach of a community service order, or
- reduction in UC due to a sanction as specified under regulations 100 to 114 of the UC Regulations 2013.

### **Benefit suspensions**

5. HB or UC can be suspended either because there is a general doubt about entitlement or because a claimant has failed to supply information pertinent to their claim. In such cases, a DHP cannot be paid. One of the intentions of the suspension provisions is to act as a lever to ensure that the claimant takes the necessary steps to provide the authority with the required information/evidence - paying a DHP could reduce the effectiveness of this lever.
6. Rent, when the person is getting Local Council Tax Support but not HB or UC housing element: in other words, when a person is only getting LCTS

### **Shortfalls caused by HB or UC overpayment recovery**

7. When recovery of a HB or UC overpayment is taking place, such shortfalls should not be considered for a DHP.

## Annex C: Legal considerations

### **R v. LB Lambeth, ex parte Gargett**

1. The Court of Appeal's decision in **R v. LB Lambeth, ex parte Gargett** sets out that any HB already paid towards 'housing costs' must be deducted when calculating the amount of a DHP to avoid duplicate provision.
2. This case relates to rent arrears and specifically whether a DHP could be used to pay a lump sum towards rent arrears (the Court of Appeal found that a DHP could be used for this purpose). However, the case also discusses the issue of duplication of DHPs and HB. In relation to preventing duplication of provision, part of the decision states 'housing benefits already paid for past housing costs must also be deducted. This is implicit in the purpose for which DHPs may be made. Otherwise, the applicant would be receiving DHPs for housing costs that have already been met by past payment of housing benefits. It would not be a case for a need for 'further' financial assistance to meet 'housing costs'.'
3. The case does not prevent the use of a DHP for rent in advance but indicates that when making such a decision on whether DHP can be used, you may consider whether there is likely to be a duplication of payments for the initial part of the tenancy if the DHP is made and if so, is there any means to avoid this.
4. If an LA decided that there is no way to avoid a duplication of the payment and the claimant is entitled to a DHP in respect of housing costs (specifically a rent in advance payment), then the LA may still award a DHP.
5. The DFA regulations require that a DHP can **only** be considered for a period where the linked HB or relevant award of UC is payable. This is of particular relevance to requests for a period of backdated DHP, since backdating cannot cover arrears accrued while not in receipt of these benefits. The case relates to rent arrears and specifically whether a DHP could be used to pay a lump sum towards past rent arrears.
6. The Court of Appeal found that there was no restriction within the DFA regulations to prevent an LA from exercising its discretion to make DHP payments for past housing costs (including arrears of rent) on the basis that the claimant was in receipt of full HB at the time.

### **R v. Sandwell MBC, ex parte Hardy.**

7. When deciding how to treat income from disability-related benefits such as Disability Living Allowance or the Personal Independence Payment, LAs must have regard to the decision of the High Court in **R v. Sandwell MBC, ex parte Hardy**.

8. This decision places an obligation on LAs to consider each DHP application on a case-by-case basis having regard to each component of the benefit, the purpose of those disability related benefits and whether the money from those benefits has been committed to other liabilities associated with disability.