

# The Implementation of Discretionary Housing Payments by Local Authorities in England

## Exploring Accountability, Equity and the Meeting of Need

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# Executive Summary

## Introduction

Discretionary Housing Payment (“DHP”) is a welfare benefit available to recipients of Housing Benefit or the housing element of Universal Credit who “require further financial assistance towards their housing costs”. DHP is administered by local authorities, who have a great deal of flexibility about how they implement the scheme.

The level of funding for DHP has been vastly increased since the introduction of Housing Benefit reforms including the Benefit Cap, the Social Sector Size Criteria (“SSSC”) (officially known as the ‘Removal of the Spare Room Subsidy’ and more commonly referred to as the ‘Bedroom Tax’) and a variety of cuts to the Local Housing Allowance rates available to private tenants.

While the additional funding was initially described as ‘transitional’, the wider use of DHPs appears to have become a permanent feature of the UK welfare state. In this context, DHP is viewed by many as a vital mechanism to prevent evictions and homelessness and a key part of the welfare safety net. Proponents of this approach have argued that the scheme provides authorities the flexibility to tailor policies and practices to respond to unique local conditions and more accurately target the groups most in need.

Nevertheless, increased reliance on DHP has been criticised on a number of grounds. Some argue that responsibility for minimum income protection should rest at the national level and remain a matter of entitlement rather than discretion. Some have also argued that central government funding for the scheme is insufficient to meet need.

This report details the findings of new primary research, aiming to build the limited evidence base on the implementation of DHP. The report and examine how local authorities organise their delivery of the scheme and make decisions in individual cases, as well as considering the implications of these findings for debates surrounding DHP and welfare reform.

## Research approach

Three local authorities were chosen as anonymised case study areas reflecting a range of approaches to spending on DHP as well as a variety of geographic and political contexts. The three authorities selected were a London borough, a metropolitan authority in the North of England and a rural authority in the East of England. In each area, qualitative interviews were carried out with key informants from the local authority as well as local social housing providers and advice services.

In addition, a series of ‘vignettes’ or hypothetical cases were used to structure discussions with a group of 2-4 frontline workers from each local authority. The vignettes were designed to represent typical applicants and explore the decision-making processes of frontline staff as well as approaches to behavioural conditionality.

## Key Findings

While information about the scheme and application process were available in all local authorities, detailed information about local policies and practices was not publicly available. This could create difficulties for applicants and their advisers who have only limited information available about the eligibility criteria that will be applied. In addition, a lack of transparency around policies and practices may hinder monitoring and evaluation efforts.

There was some evidence of innovative practice in relation to data collection and publicity such as the use of Housing Benefit data to identify and target hard-to-reach groups. Nevertheless, concerns remained about the accessibility of the scheme to Universal Credit recipients and private tenants who were felt to be particularly difficult to reach.

In the London borough, which faced a high level of applications, a key informant expressed reluctance to advertise the

scheme widely to avoid creating additional administrative burdens. Additional funding from central government would ameliorate financial pressures faced by authorities removing the disincentive to publicise the scheme.

While financial need was a key consideration in decision-making, it was not the only factor taken into account. Concerns about cost-effectiveness were also clearly pertinent and participants viewed DHP as a means to prevent costly homelessness cases.

Approaches to behavioural conditionality varied significantly across local authorities. In the Northern authority, local stakeholders referred to the barriers applicants faced when trying to change their financial circumstances and took a more supportive approach, primarily offering advice and signposting to specialist services. In the London authority, conditionality was effectively used to filter a high level of applications. It appeared that applicants were more likely to be turned away at the stage of the initial application, for example, where they had indicated spending on non-essential items. The strictest approach was taken by the Eastern authority, where short-term and conditional awards were favoured. Key informants stated that conditionality was intended to increase the independence of applicants.

These differences were reflected in authorities' different approaches to the hypothetical cases, indicating 'horizontal inequity' as applicants in the same circumstances will be treated differently depending on where they live.

Perceptions of the adequacy of central government funding for the scheme similarly varied widely. The success rates for applications was much lower in the London Borough, possibly reflecting the failure of the funding formula to reflect local pressures.

## Recommendations for Central Government:

- The Department for Work & Pensions ("DWP") should strongly recommend that local authorities should provide detailed information about local policies and practices on their websites.
- The DWP should promote as best practice the collection of additional data about both successful and unsuccessfully applications and explore the possibility of expanding the scope of voluntary data requests.
- Local authorities should be encouraged to use data collected to monitor access to DHP among different groups and undertake targeted publicity campaigns.
- The DWP should publish clear and comprehensive information describing how allocations are calculated, including all factors considered and their relative weighting as well as expanding consultation processes to include stakeholders beyond local government.
- The Central Government should consider increasing funding for the administrative costs incurred by local authorities in the administration of DHP.

## Recommendations for Local Government:

- Council members and relevant senior staff should consider carefully whether topping-up their DHP allocations could either a) prevent homeless, b) serve other local policy priorities or c) be beneficial in terms of cost-effectiveness.
- Senior members of staff should consider whether they are able to collect additional data to monitor access to DHP by groups who may be at risk of losing out and conduct targeted publicity campaigns accordingly.
- Senior members of staff should consider whether the information they provide about DHP online and in other formats is sufficiently detailed to guide applicants and their advisors and should highlight any behavioural conditions which might be imposed.

## Recommendations for other stakeholders:

- Stakeholders with strong relationships with local government should encourage local authorities who are not topping-up their funds to consider doing so.
- Stakeholders with concerns about the impact of Housing Benefit reform on particular groups could engage directly with local authorities to clarify local policies and practices and advocate for change where appropriate.

## Recommendations for further research:

- Further research should be carried out with service users to examine the impact of the application process, behavioural conditionality and the consequences of rejection. This could be incorporated into a larger study examining a wider range of authorities including those in Northern Ireland, Scotland and Wales.
- Further quantitative analysis should also be conducted. This should include an evaluation of the extent to which the current DWP funding formula meets need and is responsive to local conditions.

# 1. Introduction and background to DHPs

DHP was introduced by the Discretionary Finance Assistance Regulations 2001, replacing the Exceptional Hardship Payment scheme previously available to Housing Benefit recipients (Walker and Niner 2005). Under the 2001 regulations, DHP is payable to those entitled to Housing Benefit (or the housing element of Universal Credit) who “require further financial assistance towards their housing costs”. This phrase is not defined by legislation and has been interpreted broadly in DWP guidance, including moving costs and rent in advance (DWP 2018a).

In general, the DWP DHP manual provides “guidance and advice on good practices that should be taken into account when payment of a DHP is being considered” and is revised periodically. The document sets out and explains the legal framework for DHP, identifies a number of priority groups such as disabled people living in “significantly adapted properties” and foster parents and suggests a range of considerations for both the general administration of DHP and decision-making in individual cases. While local authorities have a public law obligation to have regard to the guidance, it is unclear exactly what this duty entails given the wide degree of local flexibility inherent in the scheme (Meers 2015). Local authorities which develop rigid policies in relation to DHP may be considered to have ‘fettered their discretion’ that is abdicated from the discretion afforded to them by the regulations. This could form the basis for legal challenge to the policy in question by way of judicial review.

The scheme is primarily funded through annual central government grants and from 2001/2 to 2010/11 operated with a total budget of only £20 million in England and Wales. In the preceding years, the budget increased rapidly in response to welfare reforms enacted in the Welfare Reform Act 2012 and Welfare Reform and Work Act 2016. This increased funding was stated to represent a transitional measure, giving those affected time to make certain behavioural changes as well as a mechanism to permanently protect certain vulnerable groups (DWP 2018a). Accordingly, the DWP planned that the DHP budget would be reduced gradually in the years following a tranche of reforms, but settling at a higher level than the previous baseline of £20 million.

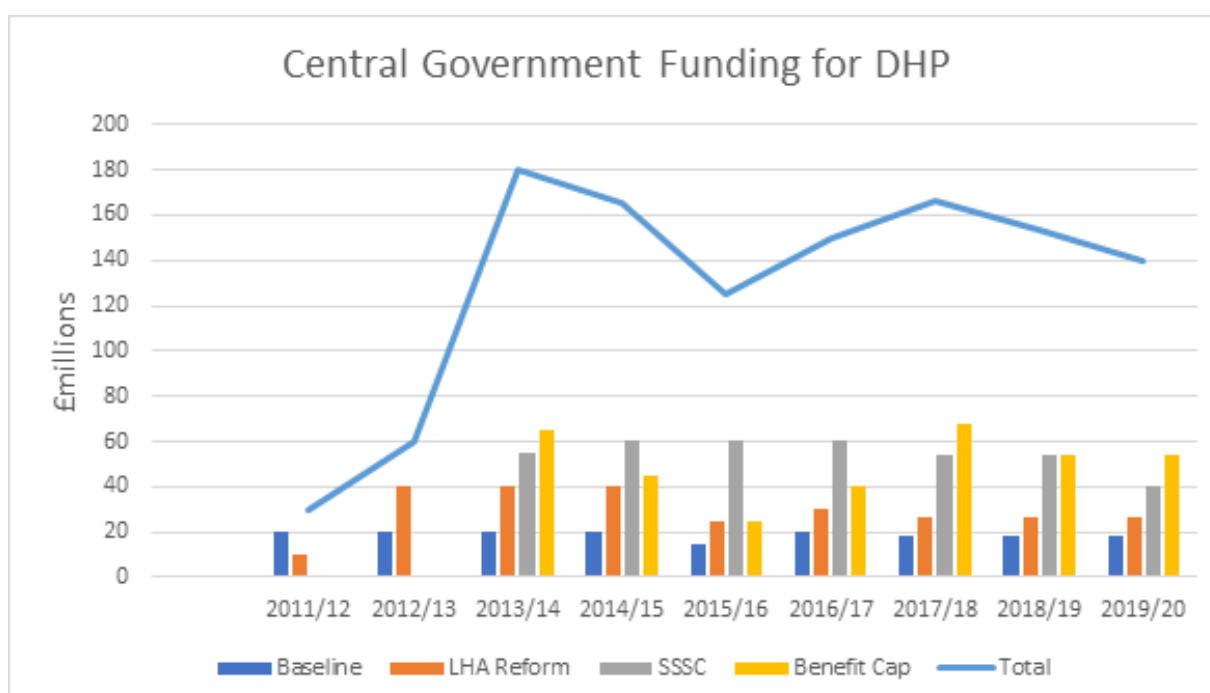


Figure 1. Central Government Funding for DHP between 2011/12 and 2019/20 in England and Wales  
Source: DWP Housing Benefit Circulars

Central government funding for DHP is divided into four categories: core funding, Local Housing Allowance (“LHA”) Reform, SSSC and the Benefit Cap. Crucially, as these categories are only earmarked and are not ring-fenced, local authorities can vary the amount they spend on any given category. SSSC and Benefit Cap now represent the largest categories of earmarked spending each with budgets of £54 million in 2018/19. The extent to which local authorities adhere to the breakdown of spending by the DWP is unclear as a significant proportion of councils do not provide voluntary data returns (only 73% of authorities provided full returns in 2017/18, DWP 2018b). The central government has argued that increased mandatory reporting would be an “additional, costly administrative burden...” (Parliament, House of Commons 2016b, p. 10).

The precise funding formula used to distribute funds to different local authorities is not currently publicly available but based on available information appears to be complex. Housing Benefit circulars indicate that the methodology is based on level of spending on Housing Benefit in each authority (adjusted to take into consideration Universal Credit receipt) as well as the estimated reductions in Housing Benefit and Universal Credit receipt due to relevant welfare forms (e.g. DWP 2019). Following a decision made in the 2015 Summer Budget, funding for LHA rates will be reduced from £54 million in 2018-19 to £40.5 million in 2019/20. In addition, local authority spending on DHP is also used to determine future allocations (DWP 2018b), creating an incentive for authorities to spend 100% to avoid deductions in future funding.

DHP is a relatively small scheme when compared to both the Housing Benefit budget as well as other centrally administered benefits such as Jobseekers Allowance (“JSA”) and Income Support. Nevertheless, it has a particular significance in wider debates about the welfare state. DHP has been relied upon in both Parliamentary and legal debates about the legal and moral legitimacy of Housing Benefit reforms (Meers 2015). In addition, the extension of the DHP scheme can be seen as reflecting a project of decentralisation and a shift from a rules-based to discretionary system of welfare administration connecting to wider discussions around localism and discretion. Concerns have been raised by some that, in the context of austerity cuts, this process has created gaps in the welfare safety net for vulnerable groups (Work and Pensions Committee 2016).

More recently, increased attention has been paid to the use of behavioural conditionality in the administration of welfare benefits in the UK (e.g. Watts et al 2014, Watts and Fitzpatrick 2018) and a study conducted into application of conditionality in the administration of DHP (Meers 2018). The use of behavioural conditionality is controversial, with critics arguing that evidence for its efficacy is weak (Watts et al 2014) or objecting on moral grounds (e.g. Standing 2011). In contrast, some proponents of conditionality argue that it is necessary for the legitimacy of welfare benefit schemes (Pickles et al 2016).

This project examines the implementation of Discretionary Housing Payments (“DHPs”) by local authorities in England, providing qualitative empirical evidence about local authority practice as well as reviewing available literature and discussing the wider debates surrounding DHP.

The specific research questions explored in this report are as follows:

- How is the practical delivery of DHP organised internally by local authorities?
- What are the key criteria applied in decision-making on DHP awards at an individual case level? In particular, what role (if any) does the assessment and enforcement of behavioural forms of conditionality play in this decision-making?
- What are the implications of these findings for wider debates about localism, discretion, accountability, austerity and behavioural conditionality in the British welfare state?

The report is structured as follows:

- Section 2 details the methods used and the scope of the study.

- Section 3 reports the findings of the literature review, examining debates surrounding DHP as well as their connection to wider discussions concerning the welfare state.
- Section 4 addresses the question of how DHP delivery is organised internally by local authorities, drawing upon the primary research and particularly interviews with key informants from each case study authority.
- Section 5 examines and compares the decision-making processes of the three case study authorities making use of the 'vignettes' or hypothetical case studies deployed.
- Section 6 concludes the report summarises the key findings of this study and considers the significance of the findings for the both discussions around DHP and wider questions about the British welfare state.

## 2. Methods

Primary research was carried out in three local authority areas, representing a range of spending patterns, political control and geographic context. These factors were selected as the key criteria because they were expected to have the greatest bearing on local policy and practice. The level of spending on DHP was expected to act as a proxy for relevant factors such as the relative strictness or generosity of local authority policy and the local level of demand. Political control was expected to be significant, as council members may have input into the development of policy or be in a position to approve or reject a policy developed by senior staff. Finally, geographic context was expected to have an impact on local need, reflecting spatial differences in the impacts of welfare reforms (Beatty and Fothergill 2016) as well as local housing and labour markets.

14 interviews and focus groups with a total of 28 participants were carried out across the case study areas. In each case study area, key informant interviews were conducted with senior staff with responsibility for the DHP delivery as well as a focus group with 2-4 frontline staff involved in the administration of DHP. In addition, key informant interviews or focus groups were conducted with welfare advisers from social housing providers and voluntary sector organisations. In the focus groups, vignettes representing hypothetical but typical applicants were used to stimulate discussion, particularly around behavioural conditionality (see Section 5 below for the vignettes deployed).

A brief summary of each case study local authority and the fieldwork conducted within it is detailed below.

### Case Study 1, East of England

Case study area 1 is a conservative controlled District Council in the East of England with a DHP spend often falling slightly below its central government allowance.

Qualitative interviews and focus groups were carried out in January and February 2019. These consisted of:

- A key informant interview with two senior members of staff responsible for the development and implementation of the Council's DHP policy;
- A focus group with two members of frontline staff responsible involved in the processing DHP applications using the vignettes to structure part of the discussion;
- A key informant interview with an adviser from a local housing association;
- A key informant interview with an adviser from a local advice service.



### Case Study 2, London Borough

Case study area 2 is a Labour controlled London Borough with a DHP spend consistently close to 100% of their central government allowance. Qualitative interviews and focus groups were carried out in November and December 2018. These consisted of:

- A key informant interview with a senior member of staff responsible for the development and implementation of the Council's DHP policy;
- A focus group with four members of frontline staff responsible for processing DHP applications, using the vignettes to structure part of the discussion;
- Key informant interviews with an adviser from a local housing association and an adviser from a local, independent advice service.
- A focus group with six advisers from another local, independent advice service using the same vignettes to structure part of the discussion.

### Case Study 3, North of England

The third case study area is a Labour controlled metropolitan area in the North of England with a DHP spend significantly above 100%. Qualitative interviews and focus groups were carried out in January 2019. These consisted of:

- A key informant interview with two senior member of staff responsible for the development and implementation of the Council's DHP policy;
- A focus group with two members of frontline staff involved in the processing DHP applications using vignettes to structure part of the discussion;
- One focus group with two welfare advisers from the authority's housing company;
- One focus group with two advisers from an independent advice service;
- A key informant interview with a welfare adviser from a local housing association.

This is a small-scale, exploratory study and thus the findings are illustrative not definitive. In addition, it is likely that the sample of local authorities is not representative of the full range of approaches taken to DHP. Participants from external organisations in all case study authorities noted that the participating council had better practices than those in the surrounding area. It is likely therefore that authorities with more carefully considered policies and practices were more likely to participate in the study. There is therefore significant scope for further empirical research into the implementation of DHP as well as secondary analysis of available administrative data.

Moreover, due to differing national contexts, these findings are primarily of significance only to English local authorities. In Scotland, responsibility for the scheme was fully devolved by the Scotland Act 2016 and the Scottish Government uses DHP to systematically counteract the Social Sector Size Criteria ("SSSC"). In Northern Ireland, DHP is currently accessible only to private tenants and is administered by the National Executive (see Housing Rights NI 2018). While the legislative framework for DHP is the same in England and Wales, the majority of Welsh authorities (20 out of 22) have collaborated on a pan-Wales DHP policy and as such the implementation of DHP in Wales is likely to be more uniform than in England.



### 3. The Wider Context for Understanding the Role of DHPs

DHPs are relevant to a range of contemporary debates on welfare benefit policy. This includes debates around the alleged 'localisation' of welfare and austerity cuts to local government grant as well as long-standing concerns around the use of discretion, avenues of accountability and implementation of behavioural conditionality. This section contextualises DHP within these wider debates.

#### Localism

Despite the high-profile localism agendas of both the Coalition and Conservative governments, the extent to which social policy has been localised is contested. The Localism Act 2011, provided for inter alia a 'general power of competence' allowing local authorities to do "anything that individuals generally may do", and increased local control of business rates (Department for Communities and Local Government 2011). Nevertheless, critics of the Act argued that it had not resulted in a meaningful shift in power with local government still highly dependant on central government grants (Pipe 2013).

The picture in relation to welfare benefit policy is particularly mixed (Turner 2018). While smaller schemes including Local Welfare Funds have been localised, funding has typically been simultaneously cut and the roll out of Universal Credit represents a large scale centralisation of functions previously carried out by local government (Turner 2018). Moreover, these developments have taken place in the context of far-reaching cuts to local government core funding, limiting the ability of councils to maintain schemes at existing levels of generosity. In 2013, the national Social Fund was replaced by locally run Local Welfare Assistance Schemes ("LWAS") and central government support was withdrawn from 2015/16. Spending on LWAS fell sharply in the years following reform, from £178 million in 2013/14 to an estimated £46.6 million in 2017/18 (Aitchison 2018). Similarly, Council Tax Benefit reforms which allowed councils greater flexibility to tailor their schemes were accompanied by a 10% cut in central government funding (Turner 2018).

Although DHP pre-dates Housing Benefit reforms, both the size and significance of the scheme has grown dramatically since 2010. Local authorities are now partly responsible for the mitigation of the centrally imposed reforms and their policies and practices more susceptible to legal challenge. Additional funding for DHP was only ever intended to mitigate a very small proportion of the cuts, at its peak totaling only 7% of Housing Benefit deductions due to welfare reform (Child Poverty Action Group 2015) with councils tasked with creating a system to prioritise between those affected. The central government allocation can only be used on DHP awards themselves. While funding towards the administrative costs associated with DHP is provided through the New Burdens scheme (DWP 2018c), New Burdens funding is generally intended to compensate for costs incurred in transitioning to legislative changes rather than to meet ongoing expenses. Accordingly, it is unlikely to meet administrative costs relating to DHP in full. For example, in many smaller local authorities the figures allocated appear insufficient to cover even one part-time member of staff (DWP 2018c).

#### Accountability

It is sometimes claimed that increased localism leads to increased accountability as local leaders are closer to residents or have greater ownership over local social problems (Katz and Bradley 2013). Consequently, the concept of accountability has been invoked in support of the localisation of certain welfare benefits including DHP. The Work and Pensions Committee, for example, have argued that this kind of localism "brings accountability for decision-making closer to the people who require support..." (Parliament, House of Commons 2016a, p.5).

In contrast, some have argued that greater localisation in the delivery of welfare benefits has led to the erosion of accountability. In their response to the Local Welfare Safety Net Enquiry, Homeless Link point to the removal of rights of appeal and question to extent to which vulnerable groups are able to exercise accountability in their local areas

(Parliament, House of Commons 2016c). Due to the discretionary nature of decision-making, published eligibility criteria are generally less precise and the eligibility criteria actually employed more difficult to access. Consequently, it may be more difficult to monitor and evaluate discretionary welfare benefit programmes (Social Security Advisory Committee 2015).

These discussions encompass a variety of mechanisms and actors, reflecting the ambiguous and multifaceted nature of 'accountability'. This ambiguity and the breadth of discussion suggests that localisation may have complex effects which are not adequately captured by a simply view of accountability as a quality that is simply increased or decreased. Below, a framework developed by Hupe and Hill (2007) is used to distinguish between different forms of public accountability and consider how these mechanisms may be facilitated or hindered by increased reliance on DHP.

Public-administrative accountability encompasses 'top-down' forms of accountability such as the legal controls and managerial techniques applied to frontline decision-makers. Firstly, although there is currently limited evidence about the use of managerial techniques in the context of DHP, its role may be particularly significant given the discretionary nature of local welfare. The use of managerial techniques might operate to decrease the variability of frontline decision-making or serve other strategic roles such as the control of spending against predetermined budgets.

Secondly, decisions made by frontline workers as well as council-wide policies and practices are subject to legal control in the form of judicial review. In practice, there are a number of barriers to the use of judicial review such as restrictive eligibility criteria for legal aid (Low-Beer and Tomlinson 2018). There have been few successful challenges to a local authority DHP policy (e.g. *R (Hardy) v Sandwell MBC* 2015), although several challenges have been settled out of court (Meers 2018). In contrast to national rule-based benefits, there is no right to appeal before a tribunal. As such, the use of DHP rather than Housing Benefit rules to make exceptions from reforms effectively removes an avenue for legal challenge.

Professional accountability refers to accountability exercised 'horizontally' by frontline workers themselves. This form of accountability is typically associated with professions and professional associations which enable peer review, support and training. Although welfare benefit assessors are not part of an established or formal profession, it has been argued that increased discretion in the administration of welfare benefits has led to de facto professionalism (Sainsbury 2008). In the context of DHP, local authorities typically provide that unsuccessful applicants may request a reconsideration by another member of staff. Where this function is exercised by another frontline worker and not a manager, review operates as a form of professional accountability.

Participatory accountability refers to accountability exercised from the 'bottom up' by those directly affected by decision-making and their representatives as well the general population. While the discretionary nature of DHP enables applicants and their representatives to interact directly with decision-makers, concerns have been raised about the extent to which disadvantaged groups will be able to effectively make their case without support (Parliament, House of Commons 2016c) A lack of appropriate support for applicants may therefore undermine the ability of individual to hold local authorities to account through advocacy and complaint.

As well as applicants and their representatives, other interested individuals and organisations may also exercise broader democratic accountability at a more general level on both a national and local scale. Numerous civil society organisations have participated in relevant House of Commons enquiries many critiquing welfare reform and increased reliance on DHP (Parliament, House of Commons 2016a). There are however several potential challenges to the exercise of this kind of accountability. The discretionary nature of DHP, as well as the lack of mandatory data collection may affect the ability of external organisations to evaluate the impact of local policy and practice. In addition, the division of responsibility for welfare benefit administration between the DWP and local authorities may generate a "risk of blurred demarcation of responsibilities" (Parliament, House of Commons 2016a, p. 3) making it difficult to determine where to focus advocacy efforts and enabling blame-avoidance behaviours (Lownes and Gardner 2016, Turner 2018).

## Under and Over Inclusivity

Another frequently cited benefit of localism in this context is the ability to target resources more efficiently by using local knowledge (e.g. Esther McVey MP HC Deb 23 January 2013, Lord Freud HL Deb 28 January 2014). On the one hand, increased reliance on DHP has been promoted as a means to target those most in need preventing over-inclusivity.

“I am convinced that a more localised, discretionary approach is the best way forward. It means that the limited resources that we have can be efficiently targeted at those who need them most.” Lord Freud  
HL Deb 14 December 2011

On the other hand, the use of DHP has been argued to avoid the potential under-inclusivity of exemptions to welfare reforms in the Housing Benefit regulations.

“My view is that if we try to set strict categories, we will not be able to ensure with 100% certainty that everyone will be covered, because people—particularly those with unique issues—do not neatly conform to tidy boxes. If an individual falls just below the line, they will miss out; that is a crucial point. If it is black and white, there will be winners and losers.” Justin Tomlinson MP HC Deb 23 February 2016

These policy aims may pull in different directions as emphasis on the avoidance of over-inclusivity might lead to under-inclusivity and vice versa. In particular, local authorities might calibrate their financial assessments in a manner which excludes those genuinely in need. As Meers (2018) notes, the financial circumstances of applicants are likely to vary over time and financial assessment may not capture one-off expenses or income drops. This may be particularly difficult for disabled applicants who may experience greater fluctuation in their necessary expenditure if their condition varies over time. Furthermore, local authorities have the ability to set their definition of “requir[ing] financial assistance” at a lower level than widely accepted measures of poverty or social exclusion for example by disallowing any spending on leisure (cf. the Minimum Income Standard, Davis et al 2018).

Furthermore, in the context of limited funding, the targeting could be distorted and funds allocated towards shallower needs which are cheaper to meet. In the context of DHP, this could be where the need is likely to be temporary or the amount requested is particularly low. In 2017, the DWP featured questions about the implementation of DHP in their LA Insight Survey. Some local authorities participating in follow up qualitative interviews reported turning down “very sympathetic cases” where applicants were in financial need because they felt that DHP would not contribute to long term improvements (DWP 2017). Examples provided of such cases, included applicants who were long-term unemployed or permanently priced out of areas due to rising rents in the private sector. In these authorities, priority is given instead to applicants with needs likely to be short-term and therefore less expensive to meet, excluding certain higher-need groups.

## Discretion

Discussions about DHP also draw on broad debates about the use of discretionary decision-making in the welfare benefit system. While some view discretion as offering increased flexibility and allowing the appropriate individualisation of support (Handler 1986), others caution against the use of discretion (Donnison 1977) or argue that discretion is inevitable but should be constrained (Molander et al 2012).

The positive view of discretion has been frequently cited in support of the use of DHP rather than the Housing Benefit rules to deal with ‘hard cases’. For some, discretion is seen as more appropriate than a rules-based approach because the creation of exceptions in the Housing Benefit rules is considered to be impossible or impractical.

“There are all sorts of individuals whom we might think should be exempt. Trying to sit down and write a regulation or a statutory instrument to define exactly who all those are does not work...” Steve Webb MP HC Deb 23 January 2013

Others argue that discretion is more appropriate than national regulations because local authorities are in a better position to make decisions on ‘hard cases’, reflecting the positive view of localism as promoting targeting efficiency.

“We have approached helping people who are hard cases through the discretionary housing payment route... The reason for that is that local areas are best placed to determine how best to help people in their own areas.” Lord Freud HL Deb 22 December 2015

In contrast, the negative view of discretion has been invoked by critics of welfare reform, who argue that its increased use in the welfare system has brought about undesirable effects.

Firstly, localised and discretionary systems inevitably create ‘horizontal equity’ as applicants in similar circumstances may be treated differently depending on their geographic location. Where variation occurs due to differences in the objective circumstances of a local authority, variability could be viewed as an advantage allowing appropriate local flexibility. However, variation might also occur due to differences in local political priorities. Inequities of this type are more controversial, especially in the context of welfare benefits for low-income households. If this is found to be the case (as is likely in the context of DHP, a highly localised scheme), a question arises as to whether decisions about fundamental protections should be made at a local or national level.

Secondly, the use of discretion may make decision-making opaque as eligibility criteria may be contained in internal local authority documents or determined informally by frontline staff and their managers. This raises a number of potential problems. Any inaccessibility of eligibility criteria makes it more difficult for applicants and their advisers to make an effective case for a welfare benefit award as they may leave out or fail to emphasise relevant information. Moreover, opaqueness undermines the ability of central government, civil society and ordinary citizens to accurately monitor and evaluate local policy and practice and arguably creates greater room for arbitrariness, bias and even discrimination (Molander et al 2012).

Finally, objections to discretion also stem from considerations of rights, dignity and power. Some critics of discretion argue that individuals should not have to rely on the goodwill or charity of public officials to receive welfare support (see Watts and Fitzpatrick 2018) and highlight imbalances of power between welfare recipients and administrators which could render the application of discretion harmful to claimants. Van Oorschot (2002) argues that discretion “gives the administrator moral and cognitive power over the applicant which is likely to invoke a feeling of inferiority on the claimant’s part.” Furthermore, discretion is portrayed by some as antithetical to the holding of rights (Asquith and Adler 1981, Van Oorschot 2002, Molander et al 2012). In the case of DHP, this is borne out by the lack of attendant appeal rights held by recipients of other kinds of welfare benefits.

The degree to which these criticisms are applicable to local implementation of DHP will depend on how individual local authorities operate their schemes, whether they collect data and whether they make it publicly accessible. While the majority of local authorities do provide a local DHP policy online, these policies are often vague and some merely explain the (minimal) regulatory framework surrounding DHP. Nevertheless, the majority of local authorities provide spending data to the DWP (DWP 2018b) and many have participated in the DWP’s LA Insight Surveys or provide additional data about DHP use on their websites.

## Adequacy

In the early years of the coalition government, ministers who discussed DHP typically also emphasised the scarcity of resources available under austerity (Lord Freud HL Deb 14 December 2011, Steve Webb MP HC Deb 22 January 2013).

In subsequent years, government rhetoric shifted and ministers typically emphasised widespread underspending by local authorities as evidence of the adequacy of funding.

“Members are saying from a sedentary position that [central government funding] is all gone, but may I remind them that last year more than £11 million of discretionary housing payment was not used by local councils?” Don Foster MP (HC Deb 8 July 2013)

While underspending could suggest a lack of local demand for DHP plausible alternative explanations have been suggested. The Local Government Association has argued that in the early days of welfare reform, local authorities found it difficult to develop appropriate DHP policies as the timetable for reforms frequently shifted at short notice (Parliament, House of Commons 2016d). Similarly, some have argued that confirmation of the allocation of DHP funds comes too close to the beginning of the financial year giving councils little time to prepare (Child Poverty Action Group 2015). Furthermore, the Work and Pensions Committee (Parliament, House of Commons 2014) has argued that DHP spending may not be an accurate representation of need as potential applicants might not be aware of DHP or be able to access it. Those affected by LHA reforms may be particularly difficult to reach when compared to social tenants. A DWP evaluation of reforms to LHA rates in 2014 found that few affected were aware of the existence of DHP (DWP 2014). While a survey of those affected by the SSSC found that 49% of participants were aware of the availability of DHP in 2013, rising to 66% in 2014 (DWP 2015).

It is likely that the adequacy of central government funding for DHP will decrease over time if the present funding strategy is maintained. Budget increases in response to welfare reform were generally couched as transitional and it was predicted that need would fall as those affected ‘adjusted’ to their new financial situation (Lord Freud HL Deb 21 December 2015). Accordingly, the peaks in funding following the enactment of the welfare reform acts in 2012 and 2016 were swiftly followed by gradual decreases in support in subsequent years. The extent to which those affected by reform have been able to adjust in the manner predicted by government has been questioned. In some areas there are significant barriers to the behavioural changes that would allow individuals to avoid the application of Housing Benefit reforms including poor local labour markets and the limited availability of appropriate housing (Learning and Work 2017).

## Public law

Discussions around the adequacy of DHP feed into separate but related legal debates about the lawfulness of certain welfare reforms. In legal challenges to both the SSSC and the Benefit Cap, government lawyers have consistently argued that DHP operates to mitigate any potentially discriminatory effect on disadvantaged groups. In the case of *R (on the application of Carmichael) v The Secretary of State for Work and Pensions* (2016), the Supreme Court held that households subject to the SSSC but requiring an extra room due to disability had not been subject to unlawful discrimination as they could access DHP instead. Similarly, in *R (on the application of DA) v The Secretary of State for Work and Pensions* (2018) (subject to ongoing appeal), the Court of Appeal referred to DHP in support of their finding that the implementation of the Benefit Cap did not discriminate against lone parent families.

This approach to DHP has been evident in almost all legal challenges to Housing Benefit reform and has been criticised as failing to reflect the realities of the DHP scheme. Meers (2015) argues that judges have relied on questionable assumptions about the operation of the DHP, namely that the DHP budget accurately reflects need and that available funds will effectively trickle down to those in need. Furthermore, critics have pointed to inconsistencies with the earlier judgement in *Burnip v Birmingham City Council* (2012). The applicants before the court in these cases were families who needed more rooms than their LHA allowance would cover because they needed overnight carers or had two children who could not share a room due to disability. In his decision, Henderson J found that DHP was insufficient to prevent discrimination due to the discretionary nature of awards, their unpredictable length and amount and that fact that DHP



is funds are subject to a capped budget. In most subsequent cases concerning disability and Housing Benefit reform including Carmichael, Burnip has been distinguished and judges taken a more positive view toward the DHP scheme.

## Behavioural conditionality

Welfare conditionality can be defined as the practice of “requir[ing] people to behave in certain ways to access welfare goods” (Watts et al 2014). While the administration of any welfare benefit requires a level of administrative conditionality (an applicant might need to provide to their bank details to ensure payment for example), behavioural conditions are used to influence the applicants conduct in a manner which is considered to be beneficial either to the applicant or wider society (Griggs and Evans 2010). Behavioural conditionality can be implemented with varying levels of surveillance and enforcement, ranging from mild social pressure to conform with advice to threats of the withdrawal of a benefit in full (Watts et al 2014).

Evidence of ‘steps taken’ by the applicant to improve their financial circumstances is cited as positive factor or even condition of access to DHP by many local authorities. These steps are often stated to include employment-related behaviours such as seeking employment or an increased in hours, moving to a more affordable property and cutting expenditure deemed non-essential (Meers 2018). Furthermore, many local authorities indicate that they will take a stricter approach upon second or subsequently applications whereby applicants are expected to shift their behaviour over time to remove their need for DHP. While it is not clear how local authorities applying such conditions monitor adherence, the use of short-term awards likely enables councils to check on applicants’ progress.

While conditionality is not required by the DHP regulations, it has been argued that implementation of behavioural conditionality is a “side-effect of localisation” driven by limited grant-based funding and the need to filter applications (Ghelani 2016). In addition, the conduct cited in local DHP policies often mirrors the aims of welfare reforms; those subject to the SSSC might be asked to look for a smaller property and benefit-capped applicants might be advised to seek work or to increase their hours. As such, the implementation of conditionality could serve either pragmatic or ideological functions, making DHP caseloads more manageable or supporting the behavioural aims of wider welfare benefit policy.

The use of welfare conditionality has drawn criticism in legal and academic spheres. Meers (2018) argues that the implementation of conditionality in the implementation of DHP might create a double burden on applicants who are also subject to the Jobseekers Allowance regime. If conditions are not coordinated between Job Centres and local authorities, applicants may be subject to parallel sets of work-related conditions with parallel evidentiary requirements (ibid). The use of conditionality may also have significant legal effects. In one First Tier Tribunal case, the application of conditionality was key to the finding that the award of DHP was insufficient to mitigate the discriminatory effect of the SSSC towards a couple unable to share a bedroom due to disability (Parliament, House of Commons 2016e). In addition, it has been argued that the practice of requiring documentary evidence of conduct may go beyond the powers afforded to local authorities by the Discretionary Financial Assistance Regulations 2001 and therefore unlawful (Meers 2018) although this point has yet to be tested in court.

The DHP scheme as well as its implementation by local authorities is therefore relevant to a range of contemporary debates about the British welfare state. These include the wider and more abstract discussions surrounding discretion, accountability and behavioural conditionality as well as material concerns arising in the context of austerity. In addition, evidence on the implementation of DHP may have significance in relation to the lawfulness of Housing Benefit reform. The proceeding sections report the findings of the primary research and their relevance to these debates. Section 4 focuses on the practical delivery of DHP by case study authorities and provides insight on adequacy, discretion and accountability. Section 5 considers frontline decision-making particularly exploring issues surrounding inclusivity, behavioural conditionality and principles of public law.

## 4. The Practical Delivery of DHPs by Local Authorities

This section explores the practical delivery of DHPs across the three case study areas and in particular approaches towards accessibility and publicity, policy development, the management of frontline staff and spending. These elements of local practice bear directly upon the issues raised in the previous section, particularly issues surrounding adequacy and accountability. Exploration of policy development and management reveals the extent to which the discretion of frontline workers is constrained by policy frameworks and mechanisms of accountability, while local approaches to spending and publicity provide insight into the adequacy of funding.

### Accessibility and publicity

In both the London and Northern authorities, the application system is flexible with applications possible both online and in person. In addition, applicants to the London authority can alternatively make an application over the phone. In the Eastern authority, applications can only be made by filling in a paper form, although key informants aspired to develop an online form in the future. The proposed online system would supplement rather than replace the paper form reflecting recognition of the possibility of digital exclusion for residents in this rural area. In all case study authorities, staff were available in the council offices to assist applicants with online applications. In the Eastern authority, key informants emphasised the availability of outreach officers who could go into the community to reach residents unable to travel, this was particularly important given the rural nature of the locality and more limited public transport links.

In all cases, information about the scheme was available online, although the level of information varied between local authorities. In both the Eastern and London authorities, a local DHP policy was available online. The policy published by the London Borough was more detailed than that of the Eastern authority, setting out their strategic aims such as supporting employment, preventing homelessness and facilitating moves to more affordable accommodation. Nevertheless, the document did not feature a number of policy positions which emerged in the course of the focus group and participants indicated that it was not frequently used in practice.

“To be honest you’ll probably find when you talk to them that they probably don’t refer to this policy document, hardly at all I suspect because it is quite broad...” (Key Informant, Local Authority, London Borough).

In contrast, the Eastern council’s policy did not detail wider policy aims merely explaining the regulatory framework and the application process. The Northern authority had no formal policy document but rather procedural guidelines for staff which are not publicly accessible. The council does provide information about DHPs on their website, which in a similar fashion to the Eastern authority’s policy document, details the regulatory framework and application process but not local policy positions or priorities. In all authorities it was therefore difficult to identify the eligibility criteria used in practice by reviewing publicly available information. This was the case even where the council demonstrably held a consistently applied policy position (see, for example, the response of London participants to Vignette 1).

Beyond the simple provision of information online, all authorities undertook additional offline publicity efforts. In all cases, authorities referred to their relationships with local housing providers and other local partners such as JobCentres, advice services and private landlord associations. Nevertheless, attitudes to publicity varied significantly between case study councils. In the London Borough, the key informant expressed concerns that more extensive forms of publicity could lead to an inundation of applications which the authority would not be able to accept due to financial pressures.

“On occasion we will do targeted mailshots via email or text because we’ve got a limited fund, it’s one of those things where we can’t... You almost don’t want to publicise it too much because we won’t be able to cater, we’re already only catering for 20 per cent of the demand...” (Key Informant, Local Authority, London Borough).



This approach raises the question of whether demand in the area is even higher than the administrative data would suggest as potential applicants may not be aware of the scheme. This is concerning given the already low success rate for DHP applications in the Borough.

The Northern council took a much more proactive approach to publicity, making use of their administrative data to identify harder to reach groups and approaching them directly. For example, senior staff have used Housing Benefit data to identify individuals who might benefit from an award of DHP but have yet to make an application.

“Yes, so we look at specific groups we can identify in our Benefit caseload, that haven’t got a DHP that we think might be entitled and potentially write to them or ring them, and just do a Benefit Health check with them.” (Key Informant, Local Authority, North of England)

At the time of interview, the authority was carrying out campaigns targeted towards Universal Credit recipients, under 35s and Housing Benefit recipients earning above the level of JSA, ESA or Income Support and therefore affected by income-tapers. In addition, the key informants reported carrying out general campaigns in which information about DHP would be included with benefit letters, Council Tax bills and the council newsletter.

In all authorities, key informants were aware of the existence of harder to reach groups and had concerns that members of these groups might not be accessing DHP. Participants from the Eastern and Northern authorities highlighted particular concerns around the shift from Housing Benefit to Universal Credit.

“What I’ve come across recently is that they don’t know about DHP, but I think it’s because I mainly work with the people transferring from HB to UC, or people going on to brand-new UC claims.” (Key Informant, Welfare Adviser, East of England)

“It’s kind of hard to tell because we administer Discretionary Housing Payment alongside Housing Benefit, we knew what proportion of our caseload were taking up DHPs, but because we don’t administer Universal Credit, we’ve got no idea how many people applied for Universal Credit that haven’t applied for a DHP that would’ve been given one.” (Key Informant, Local Authority, North of England)

Furthermore, key informants from the Northern council had concerns about private tenants with whom they had fewer opportunities for communication especially where their landlord was not part of the local private landlord group.

“The landlords that are members of [the Private Landlord Association] are only a small proportion of potentially all the landlords in [the Local Authority]. So it is a little bit harder to get the message out to tenants, in the private sector.” (Key Informant, Local Authority, North of England)

Across all authorities, participants reported finding many residents unaware of the availability of DHP reflecting the findings of the DWP’s evaluation of the LHA reforms (DWP 2014). As the participant from the Northern case study notes, knowledge of the scheme is typically dependent on access to advice or housing support services meaning that applicants not in touch with such services are unlikely to know about DHP.

“...a lot of people don’t know about DHP. They don’t realise that there is something that can help them, and they will struggle and sell their furniture, and sell anything, not realising there is somewhere where they can apply...” (Focus Group Participant, Local Authority, London Borough).

“It very much varies. It tends to be whether or not they’ve been to an advice agency and they’ve been told that it exists, or the people that will tell them about it will tend to be the landlords, so the social housing will advise them of it.” (Focus Group Participant, Welfare Adviser, North of England)

## Policy development

In all cases, senior staff draft policy documentation generally with input with senior colleagues in relevant departments while the involvement of council members is limited. In the London authority, the policy is not subject to a council cabinet vote but is approved by a designated council member who may occasionally give a “political steer” (Key Informant, Local Authority, London), while in the Eastern authority the policy may be approved by either the policy committee or the full council cabinet. In the Northern authority, there is no formal policy document, however (as detailed below) council members play a significant role in decisions about overall spending on DHP. These findings suggest that the influence of political control on local DHP policy and practice is not straightforward as council member involvement with policy development appears to be limited. However, as noted below, council member buy-in may be crucial to enabling the topping-up of central government funding which may consequently increase the generosity of local policies.

None of the authorities reported holding a formal consultation process although councils in the North and London referred to stakeholder meetings with local housing providers and voluntary sector organisations. A key informant from the Northern council felt that consultation would be ineffective given the discretionary nature of the scheme.

“No, we wouldn’t normally consult, because it is a discretionary scheme. So the procedures that we’ve got in here are really broad, because you cannot be prescriptive, because you can effectively award a DHP to anybody that the regs allow you to.” (Key Informant, Local Authority, North of England)

Whether or not local consultation around DHP is desirable, it appears that opportunities for the exercise of participant accountability are limited to advocacy in individual cases and even this form of accountability is limited by the lack of publicly accessible information about local policies and practices. As such, the degree to which increased reliance on DHP has increased public accountability is highly debatable.

## The management of frontline staff

In both the Eastern and Northern authorities, the processing of DHP applications is carried out by a small group of frontline staff who work in close proximity. In contrast, in the London Borough, decision-making responsibilities are spread between approximately 70 members of staff working in various roles within the remit of welfare or housing. In all cases, the processing of DHP applications was only one of the responsibilities held by these workers, although in the Eastern authority these additional duties were much lighter in volume.

Accordingly, processes of management and accountability varied greatly between the smaller authorities and the London Borough. Data on spending, the reasons for applications and some demographic data such as tenure type was collected by all the authorities, although the London authority was unique in its employment of quantitative targets. In the London Borough, the processing time of applications is recorded and monitored against the target of 10 days. In addition, spending on DHP awards is recorded in categories roughly corresponding to the strategic aims set out in the policy document and monitored monthly against predetermined targets.

Frontline decision-making was the most free-form in the Eastern authority, where frontline staff had a wide scope of discretion to make decisions with little intervention from more senior staff. In this authority there was greater evidence of professional rather than managerial forms of accountability as frontline workers primarily discussed difficult cases between themselves without formal guidance from managers.

“They’ll go through the claims and they manage it between themselves really... when they’ve got all of the information together, and put a package around that person, they’ll usually discuss it with each other to make sure that they’re not putting their own judgement on it.” (Key Informant, Local Authority, East of England)

In contrast, frontline workers in the London Borough were subject to a greater level of managerial control. This is unsurprising given the large scale of this authority's operations and the distribution of staff across multiple sites. In addition to the targets described above, awards exceeding £1,000 are subject to managerial approval, most likely reflecting the particularly acute financial pressures upon this authority. While the policy document itself does not appear to constrain frontline discretion, and was reported to have little bearing on day-to-day decision-making, a number of policy positions emerged which were not contained in the document (see Vignette 1).

"To be honest you'll probably find when you talk to them that they probably don't refer to this policy document, hardly at all I suspect because it is quite broad..." (Key Informant, Local Authority, London Borough).

Nonetheless, many voluntary sector participants reported referring to the document when assisting with clients with DHP applications. Finding that the document often did not reflect practice, some participants expressed frustration at the divergence, arguing for more detailed guidance for frontline staff.

"They need to have clear guidelines in order to follow, to support their decision making... It's on an individual basis. It's where that application falls, whose desk it falls on, and that's not right." (Focus Group Participant, Voluntary Sector, London Borough).

The situation in the Northern council was quite different as frontline staff are provided with a detailed guidance document. Nevertheless, participants emphasised that frontline workers had the ability to diverge from the guidance where felt appropriate and therefore maintained discretion to consider applications on a case-by-case basis.

"The policy document's quite a loose document, but for staff administering the scheme we have come up with some broad guidelines that are intended to be a help rather than restrictive, because it is discretionary." (Key Informant, Local Authority, North of England)

The document includes reference figures for the level of spending which could be considered reasonable for households of different sizes. A small amount for non-essential items of any kind is included and the figures are typically reviewed once a year to reflect legislative changes and any increase in the cost of living.

"It isn't a very generous amount, admittedly, but we wanted to acknowledge that no matter what somebody's circumstances are, they always ought to have a little bit spare to have a life or that isn't purely essential." (Key Informant, Local Authority, North of England)

This approach is markedly different to the other case study authorities where staff are not provided with reference figures and any spending considered non-essential would likely be reviewed in the course of the decision-making process. Consequently, it is likely that decision-making in this authority is more consistent across different members of staff. This approach may go some way in meeting concerns about fairness, although there may be other sources of inconsistency such as the amount left in the DHP at the given point in the financial year.

## Approaches to spending

The Northern authority proportionally spent the most on DHP, having used council funds to supplement the core budget in recent years. The decision to top-up must be approved by the council cabinet and a further request made to Ministry of Housing, Communities & Local Government to transfer funds from the Housing Revenue Account. The latter process has occasionally caused inconvenient delays. When asked why the council had chosen to increase their DHP budget, key informants cited cost-efficiencies as well as the wellbeing of residents.

“It’s cheaper than having our housing stock void for periods of time or going through eviction processes, and causing all that turmoil as well. So politically our members are quite supportive of that happening.” (Key Informant, Local Authority, North of England)

Although spending is periodically monitored by senior staff some participants did report seeing variations across the course of the year. Another participant felt that the authority was more consistent than those in the surrounding area.

“It depends on what part of the funding year that you applied; when the funding’s first granted you’re more likely to get an award...” (Key Informant, Welfare Adviser, North of England)

“They’re quite consistent with their awards and they’re not tight - I think they like to spend their money early on as well, whereas a lot of them like I said, will hold on to the money until November, and then say, ‘Right, go,’ and pay as many as you can.” (Key Informant, Welfare Adviser, North of England)

The London Borough consistently spent around 100% of their allocation, occasionally using a small amount of council funding to manage applications at the end of the financial year.

“...we always plan to spend the 100 percent because otherwise you have to give the money back to the government and so there’s a point of principle about making sure we spend it all... occasionally we’ve used £5,000 or £10,000 of our own money just to see through at the end of the year if there’s a particularly deserving case and there’s no government money left but generally speaking, we don’t supplement it.” (Key Informant, Local Authority, London Borough)

Spending is monitored monthly against a target spend for each category and, if it exceeds the earmarked sum, frontline staff may be directed to take a stricter approach in their decision-making.

“...if we are overspending in an area, we’ll take a view as to whether that’s a one-off situation or whether or not we need to actually say to the officers, ‘Well just hold back on that now. You need to be stricter on this and not give so much.’ If you were giving for 13 weeks maybe you’re giving more claims for eight weeks, say, or something like that...” (Key Informant, Local Authority, London Borough)

In addition, it appears that if there is money remaining at the end of the financial year, steps may be taken to elicit more applications and a more lenient approach taken to decision-making.

“... an email generally comes around in the new year to say if you’ve got any DHP, we’ll look on it a little bit more positively.” (Key Informant, Voluntary Sector, London Borough).

The same key informant reported using this approach strategically, advising a client to time her application so that she would be reapplying at the end of the financial year and therefore would be more likely to receive a subsequent award. While the approach is pragmatic, enabling the local authority to maximise their spend and ensure their grant is not reduced due to a perceived lack of demand, it nonetheless raises issues of inconsistency and arbitrariness. Furthermore, this approach sits in tension to the aim of prioritising needs by introducing the extraneous factors of ‘position in the financial year’ and ‘funds remaining in the DHP pot’.

The Eastern authority tended to report small underspends. While one participant expressed regret that they had previously underspent their budget, they also cited a general concern to avoid the unnecessary spending of central government funds. Topping up the allowance was not raised as an option likely reflecting a view that the core allowance was sufficient to meet local needs.

“I was a bit annoyed we didn’t spend all the money last year but if you don’t have the need to do it, it’s not our money, it’s DWP’s money.” (Key Informant, Local Authority, East of England)

When asked why the council did not always exhaust central government funds, the key informants explained that they exercised a cautious approach to spending ensuring that they did not exceed the budget.

“That’s probably why we didn’t spend all our money last year, because we just didn’t get the claims through but what about if someone walks in... We have ten people walk in with £2,000 worth of arrears... we’d at least have the money there to be able to allocate that funding to save their properties.” (Key Informant, Local Authority, East of England)

The majority of participants from the London and Northern authorities felt that central government funding was not sufficient to meet local need, while participants from the Eastern authority felt that their funding was adequate.

In London, data collected by the local authority revealed the success rate of applications in recent months was around 20%. Participants noted a more restrictive approach to spending in recent years as the additional funding allocated in response to the 2015 welfare reforms was gradually withdrawn. The local authority key informant noted that “[m]ost of the people who were affected by the welfare reforms between 2011 and 2015 are still affected by them...”, creating additional pressure on the DHP fund.

The roll out Universal Credit was expected to increase demand further and it was expected that some of the DHP fund might be used to meet this. However, concerns were raised that regulations might prevent the use of DHP to assist in some cases where Universal Credit had been delayed.

“...if somebody was waiting for their first payment of Universal Credit and not on Housing Benefit either, there’s no legal reason to pay them a DHP until they’ve got some entitlement to one of those benefits...” (Key Informant, Local Authority, London Borough).

In addition, the local authority faced significant pressure due to a large number of homeless households living in temporary accommodation. Consequently, temporary accommodation represented one of the largest categories of spending reflecting concerns raised in the Local Welfare Safety Net Enquiry (Parliament, House of Commons 2016a). One participant with significant experience of providing welfare advice in the Borough reported a recurring problem where families moving from temporary to permanent accommodation in the social sector found that their DHP payments were suddenly ceased even though they could not afford their rents. In at least one case this had led to a single parent family accruing significant rent arrears, being evicted and presenting to the local authority as homeless for a second time. Perversely it appears that DHP is being refused in at least some cases where it would be a much more effective solution to a housing crisis. In addition, this report calls into question the legality of the authority’s practices in placing homeless households in unaffordable accommodation which would be considered unsuitable under homelessness legislation.

In the Northern authority, central government funding was similarly felt to be insufficient. Although the success rate for applications was much higher than London, around 65% in the months prior to the key informant interview. This is likely in part due to the significant top-up of central government funds effected by the council.

Some participants suggested that the funding formula did not take account of various local challenges.

“I think, really, that it’s not adequately weighted by region. I don’t think the formula that calculates DHP takes employment statistics or poverty statistics into account... Nor, really, does it take account of the ability of a council or housing associations in a particular area to actually provide affordable housing of the type needed to alleviate a lot of the problems that people come to us for a DHP for.” (Key Informant, Local Authority, North of England)

The key informants noted that challenging external conditions were making it difficult for applicants to take advantage of the respite offered by DHP to improve their situation and avoid long-term reliance on the benefit.

“Not because of any fault in the process, more in the lack of available work, the lack of smaller accommodation...We'd probably find that there are a lot of people who potentially have done as much as they can, but are still struggling to manage because there's actually nothing else they can do.” (Key Informant, Local Authority, North of England)

This view was shared by participants from the local authority housing company who similarly felt that structural barriers could limit the ability of applicants to change their circumstances.

“At the end of the day, there's a lot of people with two-bed, three-bed properties, whatever, they can't get the properties that they need to be in.” (Focus Group Participant, Welfare Adviser, North of England)

In contrast to these larger authorities, participants from the Eastern council felt that central government funding was sufficient citing an underspend in the previous year. The data revealed that around 60% of recent applications were successful, a level similar to that of the Northern council, but much higher than the London Borough.

In general, the council was reported to be in a stronger position to mitigate the impact of welfare reform than many others in the region. Local authority participants noted that they had a shorter housing waiting list than many nearby councils and a good relationship with local social housing providers.

“...we have options all the time. We can move people around. We've got opportunities to house people.” (Key Informant, Local Authority, East of England)

The key informants nevertheless viewed DHP fund as a valuable local resource and expressed concern that it might be incorporated into the Universal Credit system and thus removed from local control. The localised and discretionary nature of DHP was felt to enable the tailoring of support for local residents, reflecting the positive view of localisation detailed above.

“Discretionary Housing Benefit Payment allows us to actually look at the people and see their own situations and be a bit more flexible on what needs to be done to get them in a positive situation.” (Key Informant, Local Authority, East of England)

Generally, participants from social housing providers and advice services were similarly positive about the role of DHP in supporting their clients financially, although some argued that DHP in its current form was not sufficient to ameliorate the impact of welfare reform long term.

“When it works it can be really, it can be really life changing, or it can just help somebody just get from A to B...” (Key Informant, Welfare Adviser, East of England)

“... you've always got to bear in mind that any DHP solution is only a temporary solution. You haven't fixed the roof forever!” (Key Informant, Welfare Adviser, London Borough)

While these diverging views may reflect different ideological positions, material factors could also be at play. The difference between the housing markets of the Eastern authority and the London Borough, for example, were stark.



## 5. The Criteria Used in the Individual Decision-making Process

One of the key research questions examined by this study relates to the criteria applied in decision-making on DHP awards at the individual case level as well as the application of behavioural conditionality.

To explore this question, 'vignettes' were used to stimulate discussion around decision-making and the use of behavioural conditionality. The 'vignettes' or hypothetical cases were designed to represent typical DHP applicants affected by three categories of Housing Benefit reform: SSSC, Benefit Cap and LHA reforms. Focus group participants were presented with the paragraphs below and additional details or 'prompts' were proposed during the course of discussion to examine the significance of a variety of factors in decision-making. These prompts were largely drawn from a survey of local authority policy documents and represented circumstances which might negatively affect an application for DHP. The same vignettes and prompts were delivered to participants from the voluntary sector who were asked to describe how they would advise the potential applicant and how they thought an application for DHP might play out.

### VIGNETTE 1

Joanne is 50 and lives in a two-bedroom council flat. She recently succeeded the tenancy when her father passed away and now lives in the property alone. She has been diagnosed with rheumatoid arthritis and needs to use a wheelchair or walking stick when her symptoms flare up. Due to her condition she has not worked for the last 6 years and the local authority has adapted the property by widening the door-frames and installing a walk-in shower. She receives ESA and the mobility component of DLA.

Prompts:

- a) She is in the ESA work group rather than the support group.
- b) She has a Sky TV subscription.
- c) She spends much more on heating and transport than the average applicant living in a similar property.
- d) She has savings of £6,000 which she is saving in case of an emergency.
- e) She was offered an alternative property (which was wheelchair accessible) but refused to move.

Joanne was expected to elicit the most generous response from local authorities as a recently bereaved women living in a property adapted for her disability. The DWP guidance stated that where a disabled person is living in social housing which has been "significantly adapted" local authorities should consider making a long-term award or indefinite award of DHP (DWP 2018a), albeit that "significantly adapted" is not defined by either the Regulations or the DWP guidance.

The findings, however, were not entirely consistent with this initial expectation as participants from the Eastern authority stated that they would make a short-term award (with a suggested duration of three months) giving Joanne time to look for an alternative property.

"How permanent the DHP would be, that's the main thing, we try not to award long-term so it would be something that we could potentially help with while she looks for alternative accommodation..." (Focus Group Participant, Local Authority, East of England)



One participant suggested that long term awards were only appropriate where a property had been “adapted considerably” (reflecting the DWP guidance) and where it was unlikely that alternative accommodation would be available. A factor which may partly explain this approach therefore is the perceived availability of an alternative in the form of one bedroom and adapted properties in the area.

“Although that has been adapted, she might not want to stay there and in that case, we could talk to her about moving if she wanted to, to a one-bedroom. We do have quite a lot of level access properties with walk-in showers already adapted that come up through the housing register.” (Focus Group Participant, Local Authority, East of England)

Nevertheless, the lack of consideration of a long-term award undermines the view of DHP as an ongoing means of mitigating welfare reform for vulnerable groups. Participants appeared to view DHP as a transitional measure for the purpose of stimulating behavioural change in all but the most exceptional cases and not a permanent means to avoid the potentially discriminatory effects of welfare reform.

In contrast, participants from the Northern and London authorities indicated that they would be likely to make a long-term award of DHP without consideration of Joanne’s conduct. In the London Borough, Joanne’s case was covered by a Council-wide policy (not explicitly stated within their DHP policy document) that recipients of DLA or PIP would receive a 52-week award to be renewed annually so long as their circumstances did not change. Frontline staff would verify Joanne’s receipt of DLA and ESA, but would not conduct an assessment of income and expenditure.

“At present, for this itself, we are doing that on any bedroom tax case where customers on a specific benefit, which is the DLA, PIP, ESA support, if they’re receiving that we actually go ahead and award DHP for 52 weeks.” (Focus Group Participant, Local Authority, London Borough)

In the Northern authority, Joanne would be required to complete a DHP form. Frontline staff would verify information such as the receipt of welfare benefits and information about the Council property but would not require additional evidence to support the initial application.

“No, we don’t ask for evidence, we just ask them to complete and sign the form, if there’s any further applications after that and it differs a lot or if their expenditures have increased a lot, then we might ask for certain evidence or proofs.” (Focus Group Participant, Local Authority, North of England)

Furthermore, in both the London and Northern authorities, participants indicated that Joanne would not be asked to move to a smaller property with participants in both groups citing cost effectiveness as a factor.

“...we wouldn’t be expecting her to move because obviously then that wouldn’t be cost effective for the council as a whole anyway, having to rehouse her.” (Focus Group Participant, Local Authority, North of England)

In the London Borough, one participant did state that they might offer Joanne a financial incentive to downsize (taking advantage of a wider council scheme) but was clear that this would be voluntary. Practice in these authorities therefore allows for DHP to act as a long term solution for some groups and not merely a transitional measure.

The treatment of disability-related income also varied significantly in the Eastern authority. Participants in the Eastern authority stated that they would conduct an income and expenditure assessment taking into account DLA, assuming that it could be used to meet the shortfall.

“I can see it has been adapted but I’d also want to look at the income and expenditure and see whether if she’s getting a mobility component or disability living allowance. That would be to help her to afford the extra room potentially.” (Focus Group Participant, Local Authority, East of England)

In the London and Northern authorities, DLA and PIP are automatically excluded from income and expenditure assessments. One participant from the London Borough went as far to say that to include DLA or PIP in these calculations would be morally wrong.

“[DLA or PIP] are not supposed to be counted in as their income because they are supposed to go towards something to do with their disability to assist them with that extra food, or that extra help or whatever, so then to say that should be used towards your housing, because it’s got nothing to do with that, so it would be morally wrong to do that in that type of decision.”(Focus Group Participant, Local Authority, London Borough)

While the inclusion of DLA or PIP is not prohibited by the Regulations, it could contravene public law principles. The practice of including DLA in financial assessments for DHP was considered by the courts in *R (one the application of Hardy) v Sandwell MBC (2015)*. The court found the Council’s practice of systematically including the care component of DLA in calculations of income and expenditure to be unlawful, emphasising the special purpose of DLA in meeting expenses arising due to disability and noting that “the pattern of expenditure of a disabled person may well be different and more difficult to predict than that of an applicant without a disability” [58].

Although participants from the Eastern authority did not explicitly mention the possibility of disability-related expenses, they did indicate that they would ask further questions about high costs. It is therefore possible that in practice the additional costs of disability could be picked up by assessors and factored into income and expenditure assessments. Nonetheless, the inclusion of disability-related income raises the potential for discrimination and the contravention of *Hardy* if disability-related expenses are inaccurately calculated. In any case, it appeared that applicants like Joanne would be in a much stronger position in either the London or Northern authorities as in both authorities, it appeared therefore that disabled residents affected by the SSSC were well protected and would be subject only to light-touch financial assessments.

In Joanne’s case, the question of non-essential spending could only arise in the Eastern and Northern authorities, as no income/expenditure assessment would be conducted by the London Borough. In the Northern authority, participants referred to the allowance for non-essential expenditure set out in their guidance document. Spending which exceeded this amount would be considered on a case-by case basis.

In the Eastern authority, spending considered non-essential would not necessarily result in the rejection of an application, but applicants may be referred for budgeting advice or asked to limit their non-essential spending going forward, for example by ending a Sky TV contract.

“It depends, if it was transport and heating that seems fair to ask a bit more questions, if it’s £100 a month on Sky then we’d take a slightly more judgemental view on that as to whether that’s money best spent on... When can the contract be ended on that?” (Focus Group Participant, Local Authority, East of England)

Similarly, the question of capital similarly only arose in the Eastern and Northern authorities. In both cases the applicant’s capital would be considered on a case-by-case basis and inquiries made about whether the savings were required for any particular purpose. Unsurprisingly, in some cases applicants might be expected to use some of their capital to pay towards the shortfall.

“Normally, there are exceptions to it, but on normal cases if they’ve got capital than they wouldn’t get the discretionary housing payment because they would be expected to use some of that towards any shortfalls.” (Focus Group Participant, Local Authority, North of England)

A participating welfare advisor reported that some clients had experienced difficulty proving that their capital was required to meet other unavoidable expenses such as funeral costs.

## VIGNETTE 2

Sam is 36, he is single and doesn't have any children. He has moved in and out of casual work since school. He recently moved to the area because he had heard that there was plenty of work here, however, he has struggled to find employment so far and is claiming JSA. He is living in a one-bedroom flat in the private rental sector and his Housing Benefit does not cover his rent in full because it exceeds the LHA rate.

Prompts:

- a) He smokes 3-4 packets of cigarettes a week/£30 per week on alcohol/suspect drug use.
- b) He didn't get housing or money advice or check the LHA rates before he moved.
- c) Although he hasn't been sanctioned yet, Sam has received a warning from the Job Centre because he hasn't been applying to enough jobs.

Sam was expected to be the least likely to receive an award of DHP having moved into a property with a rent higher than the applicable LHA rate whilst unemployed. This expectation was largely borne out and approaches varied less significantly between authorities than in the previous example. Participants from all authorities suggested a short-term award to give Sam a chance to look for work, with participants from the London Borough least likely to make award.

The fact that Sam had moved into a property with rent exceeding the applicable LHA rate proved to be a key consideration in all case study areas.

"I'd want to find out when he moved because it said he recently moved to the area because if he's taken on a liability straightaway that he actually can't afford that would affect the decision. You shouldn't rent somewhere if you already know straight away that you're not going to be able to afford it." (Focus Group Participant, Local Authority, East of England)

"...the main thing is he's living in a property that's quite expensive because the LHA rates are based on an average within the local area, so he's already put himself at a disadvantage by moving into a property that's above the LHA rate, and we would only award DHP up to the LHA rate." (Focus Group Participant, Local Authority, London Borough)

In the London group, some participants raised concerns that the granting of DHP beyond LHA rates might lead to perverse effects in the private rental market and indicated they would be unlikely to grant Sam DHP for this reason. If an award was given, some participants indicated that they would not accept any further applications.

"If you start awarding above the LHA rate, then the landlords will keep putting the rents up... A line has to be drawn somewhere. That's why the LHA rate is there in the first place" (Focus Group Participant, Local Authority, London Borough)

"Me personally, I think I might stipulate this may be the last one we can actually do, because obviously if he keeps on coming back and applying he's not actually resolving his issue." (Focus Group Participant, Local Authority, London Borough)

Nonetheless, one participant indicated that he would be likely to grant Sam a short-term award if he could provide evidence that he was seeking employment.

“Here it’s saying that he’s looking for employment, but he’s struggling, so prove to me that you are looking, not just saying that you are, show me the job searches, all these interviews, show me appointments.” (Focus Group Participant, Local Authority, London Borough)

In the Eastern and Northern authorities, participants would expect Sam to take steps to look for work after the initial award of DHP and would review his actions upon any reapplication. In the Eastern authority, one participant indicated that he would refer Sam to a local employment support scheme. Other suggested actions included reductions in non-essential spending (North), referral to a local affordable lodging scheme (East) and registering for social housing (East).

“Yes, so if he said he’s seeking employment, we would expect him to be active with that and then again, if he’s needing a further award, we would expect him to say what he’s done about employment...” (Focus Group Participant, Local Authority, North of England)

“I think we’d probably just signpost saying, ‘You can go to the job clubs, this is how you can access those and you must work with the Jobcentre and apply for everything that you can,’ we’d probably just signpost and advise on that point.” (Focus Group Participant, Local Authority, East of England)

One participant from an advice service in the London Borough provided an insight into the wide-reaching effects of behavioural conditionality, stating that they would preempt consideration of conduct in the application process by asking clients to collect evidence of steps to improve their situation irrespective of whether these steps were likely to be successful.

“I think one of the things they look at is whether you’ve tried to find cheaper accommodation, so that would be one thing, just tell [Sam] to find a way to prove that he has been proactive, but just unsuccessful.” (Focus Group Participant, Voluntary Sector, London Borough)

Approaches to spending on cigarettes or alcohol varied across the three areas. In the London Borough, participants were the least accommodating of such spending. In contrast, in the Northern authority, participants stated that they would make note of spending on cigarettes but that this would not be in itself a reason for rejecting an application.

“I’ll be honest with you. We’d more than likely turn it down.” (Focus Group Participant, Local Authority, London Borough)

“We would look at it and note it and say that we’re expecting a reduction in it, but it wouldn’t really affect the decision for them, you would still give the award.” (Focus Group Participant, Local Authority, North of England)

The approach of the London Borough may prove problematic for applicants with substance dependency problems who may face significant barriers to reducing their consumption.

### VIGNETTE 3

Layla is 26. She is single and has three children aged 18 months, 2 years and 4 years. Her ex-partner does not have any contact with the family. She is currently working 8 hours per week as a waitress and is receiving Income Support, Child Tax Credits and Child Benefit. She has struggled to pay her rent since the introduction of the Benefit Cap. Layla's mum is able to look after the children while Layla is at work, but this might not be the case if Layla increased her hours.

Prompts:

- a) Does it make a difference if she is living in social housing or the private rental sector?
- b) She has other debts due to payments to BrightHouse for furniture acquired on hire-purchase agreement and pay-day loans.
- c) She spends £20 per week on swimming lessons for the children.
- d) What if the children were school age? What if they were studying for their GCSEs?

Participants from all authorities viewed Layla as being typical of applicants affected by the benefit cap, although participants from the London group noted that applicants in similar circumstances tended not to be in work at all. In spite of this observation, participants in this authority focused on encouraging and assisting Layla to increase her hours at work to 16 to avoid the application of the Benefit Cap. One participant emphasised that this would be a win-win situation for both Layla and the local authority, improving her financial situation but also reducing demand for DHP.

“You have more income coming in overall to help your household and you are not relying on the council anymore because you are receiving the benefit...” (Focus Group Participant, Local Authority, London Borough)

Unwillingness to take steps to increase her hours was viewed unfavourably by participants and would likely result in the refusal of the application.

“If she’s saying point blank, I’m not willing to do something, then that’s different than someone not having the ability to increase their hours, so that makes a difference. It’s all about the mindset of that person.” (Focus Group Participant, Local Authority, London Borough)

In contrast, participants from the Eastern and Northern authorities felt that an increase of hours was unrealistic due to the difficulty of finding appropriate childcare. In the Eastern authority, one participant stated that they would focus on encouraging the applicant to obtain child support from the father of her children in the first instance.

“She’s got really young children so it’s going to be difficult for her, she’s a single parent...” (Focus Group Participant, Local Authority, North of England)

“Yes, we’d also go through, explain to her how she could get the childcare within a tax credit and things like that to look for work but ultimately, with those ages, it’s going to be hard for her to find anywhere that would take children that young, for her to increase her hours.” (Focus Group Participant, Local Authority, East of England)

In the Northern authority, participants noted that they would not review the income and expenditure of applicants newly subject to the Benefit Cap. They would generally grant a long-term award of DHP to enable such applicants to take steps to mitigate the Benefit Cap with details about the availability of budgeting and debt advice contained in the award letter.

“We would expect her to complete her detail so that we’ll have them on record, but we wouldn’t even look at income and expenditure as a sole parent. If it’s a new benefit cap we would award it for 26 weeks to give her time to obviously adjust her finances after the cap’s been introduced because quite often it can make quite a big difference to them.”(Focus Group Participant, Local Authority, North of England)

At the end of this period, the award would be reviewed and possibly extended for another 26 weeks. At this point income and expenditure would be considered and spending considered to be excessive queried. If the applicant had significant debts, they would be expected to engage with debt advice.

This divergence in approaches could reflect differences in the availability of employment in the local authority areas. However, given that childcare is likely to be a significant barrier to increasing hours, this approach could also represent the employment of behavioural conditionality to filter a high level of applications reducing pressures on stretched DHP funds.

Approaches to spending on leisure also varied between local authorities. In the Northern authority, the costs of leisure activities would be covered up to the allowance for non-essential spending. In addition, one participant emphasised that they would recognise higher essential spending where an applicant had children.

“There’s an allowance for leisure and nonessential, yes, activities, but again, it would be limited. So if they would spend £100 a week on swimming lessons, we would only take into account a certain amount of that.”(Focus Group Participant, Local Authority, North of England)

“Sometimes put an expenditure on nappies and things like that, clothes and stuff like that for kids, babies and stuff like that, so their electric bills are high because they’ve got to do a tonne of washing and stuff like that which is fair enough.”(Focus Group Participant, Local Authority, North of England)

In the Eastern and London authorities, non-essential spending was viewed less favourably. In London, non-essential spending might result in an application being rejected outright, an approach which was criticised by some participants in the voluntary sector focus group.

“I had somebody that was spending - they were asking for like £25 DHP and they were spending £30 a week on socialising, so that’s a definite no.”(Focus Group Participant, Local Authority, London Borough)

“Any expenses that seems out of place for them, they will jump on it, anything they could jump on, anyway. You have to be living below poverty, really, to stand a chance.”(Focus Group Participant, Voluntary Sector, London Borough)

In the Eastern authority, non-essential spending would not necessarily lead to the rejection of an application but would be queried and challenged by frontline workers.

“... we do an income expenditure, if she’s spending too much money, we can’t tell somebody what they can and can’t spend their money on but if they’re spending more than they’ve got coming in then they need to make the decision as to where to cut back. It’s just quite a frank discussion with people normally.”(Focus Group Participant, Local Authority, East of England)

While this approach is understandable given the limited nature of funding for DHP, it could result in the exclusion of applications with lower level needs but who could still be considered to be experiencing poverty or social exclusion. As noted above, a small amount of spending on leisure activities is viewed as necessary by many measures of poverty and social exclusion, such as the Minimum Income Standard (Davis et al 2018).

When prompted on debt, participants in all groups stated that they would refer Layla for specialist debt advice. In the

Eastern and Northern authorities, participants indicated that failure to engage with debt advice could negatively affect future applications for DHP.

“If they’re paying excessive amounts back on debts, then we would expect them to have done something and maybe ask for more information on that. Again, depending on how much it is and how many they’ve got...” (Focus Group Participant, Local Authority, North of England)

The reason that debt had been incurred could make a difference to how the application was viewed. In the London Borough, participants indicated that debts considered to be unnecessary might result in the rejection of an application.

“If you’ve got yourself into debt for something you don’t actually need, you could have been using that to pay your rent.” (Focus Group Participant, Local Authority, London Borough)

Arguably, the approach of the London Borough penalises the past fault of applicants regardless of whether they are able to rectifying their situation in the present.

Finally, households with children taking GCSE and A Levels might be granted special consideration to ensure stability for the examination period. This appeared to be a more operative issue in London, possibly because of a higher chance of eviction and displacement.

“Yes, if they are taking their GCSE exams or A Levels and you think it’s crucial for them to stay where they are, it is important, for a certain amount of time we would award, but then we would review the situation.” (Focus Group Participant, Local Authority, London Borough)



## 6. Conclusions, Policy Implications and Recommendations

This section provides an overview of the key findings of the study, addressing the research questions identified in Section 1. This is followed by a discussion of the significance of these findings for wider policy debates surrounding DHP. Finally, a number of specific policy recommendations are made, aimed at central government, local government, other stakeholders and the research community.

### Key Findings

This study aimed to answer three research questions concerning the practical delivery of DHP, the criteria applied in decision-making, and the relationship between DHP and wider debates about the UK welfare state. These questions were:

1. How is the practical delivery of DHP organised internally by local authorities?
2. What are the key criteria applied in decision-making on DHP awards at an individual case level? In particular, what role (if any) does the assessment and enforcement of behavioural forms of conditionality play in this decision-making?
3. What are the implications of these findings for wider debates about localism, discretion, accountability, austerity and behavioural conditionality in the British welfare state?

### The practical delivery of DHP

Key informant interviews with senior members of staff from three local authorities provided insight into the practical delivery of the scheme, particularly in relation to publicity and accessibility, managerial control and data collection. This data was supplemented by interviews and focus groups conducted with front-line staff and external welfare advisers.

In all case study authorities, basic information about the DHP scheme was available on the council website. The information provided by the Eastern and Northern authorities was more limited in scope covering only the eligibility criteria prescribed by regulation and the application procedure. While the London authority provided a more detailed policy online, the document focused on broad strategic aims and did not set out some key policy positions. For example, responses to Vignette 1 indicated a consistent practice of making long term awards to applicants in receipt of DLA or PIP and this was not referenced by the policy document.

The choice not to publicise local policies and procedures may be influenced by the discretionary nature of the scheme. Local authorities may wish to avoid creating the impression that they have ‘fettered’ their discretion. As noted above, the fettering of discretion is a ground of judicial review and it is possible that local authorities which hold rigid policies on the use of DHP may contravene this principle rendering those elements of their policies unlawful. Nevertheless, a lack of transparency around local policy and practice may make it difficult for applicants and their advisers to understand the decision-making process and hinder monitoring and evaluation efforts. Furthermore, the failure to publish a policy may be considered unlawful in itself, as it potentially limits the ability of applicants to challenge it by way of judicial review. This was suggested to be the case in relation to DHP in the obiter dicta of Justice Nicklin in *R. (on the application of Rehoune) v LB Islington*.

Beyond the provision of information, participants from all local authorities were cognisant of issues surrounding accessibility and in all cases support was available to assist potential applicants. In the Eastern authority, particular challenges arose due to the rural nature of the locality and outreach workers could be deployed to visit residents in their own homes and assist with claims. In addition, concerns were raised in all case study areas about the impact of the Universal Credit rollout. Administration of Housing Benefit in-house had given local authorities both easy access to

data and a clear line of communication with claimants. The centralising effects of Universal Credit and the location of accompanying support services in external organisations was therefore felt likely to hinder access.

Approaches to publicising DHP varied significantly between case study authorities. The Northern authority was found to take an exceptionally proactive approach, identifying hard-to-reach groups and contacting them directly to offer welfare advice and signpost them towards DHP. In contrast, the key informant from the London Borough expressed reluctance to publicise the scheme too widely due to very high levels of demand. This divergence could reflect the distinct approaches to spending taken by these two authorities. The Northern authority tops-up funds allocated by central government, while the London Borough aims to spend close to 100% and only tops-up the fund by nominal amounts. The London authority's approach to spending may therefore limit their ability to respond to demand and create a disincentive to publicise the scheme. However, the London Borough would need to accept roughly three times as many applications as they do currently to reach the success rate of the Northern or Eastern authorities. That may not be possible within the existing spending limits imposed on local authorities (1.5 times the central government allocation).

The approach of the London Borough, whilst explicable given financial pressures, raises issues around fairness as well as suggesting the inadequacy of resources. Firstly, it is possible that groups such as private renters are systematically less likely to be aware of DHP than social tenants who have either a line of communication with the council or access to tenancy support officers. Accordingly, where no special efforts are made to raise awareness of DHP among these groups, they may be disadvantaged. In addition, this finding calls into question the adequacy of the central government allocation in the area. The reported success rate for applications in the Borough was low at approximately 20%, even though the Borough was aiming to spend 100% of their central government allowance. The lack of publicity surrounding DHP suggests that there may be hidden need which is not reflected by application rates.

The organisation and management of staffing similarly varied across participating councils, largely reflecting differences in the scale of their operations. In the London Borough, the use of managerial techniques was most evident. Frontline staff collect extensive data which is monitored against targets set by senior colleagues and awards exceeding £1,000 are subject to managerial approval. This was unsurprising given the large number of frontline staff (around 70) responsible for the processing of DHP applications and their dispersal across multiple sites. In the smaller authorities, DHP applications were processed by fewer employees all working in close proximity and, consequently, frontline staff appeared to have a greater degree of discretion. In the Northern authority, although senior staff had drafted a detailed guidance document including reference figures, frontline staff were permitted to deviate from this as they felt appropriate. Interestingly, only participants from the London Borough expressed concerns about the variability of decision-making. This likely reflects the large number of frontline staff processing applications across different sites, teams and roles.

While the greater use of managerial techniques in the London Borough led to a higher level of data collection, senior staff in all case study areas routinely collected data beyond the standard reporting requested by the DWP. Data collection is currently not mandatory with only 73% of local authority making returns in full in 2017/18 (DWP 2018b) and is currently limited to overall spend broken down into categories of awards such as SSSC or Benefit Cap. Local authorities are thus not required to report the number of applications and awards or any demographic data about applicants and recipients of DHP. This means that it is not possible to compare applications and success rates across different authorities or assess whether DHP is being distributed equitably among demographic groups. While the collection of additional data could be viewed as an additional burden on already stretched local authorities, arguably it is justified to enable the appropriate monitoring of equity and the adequacy of funding.

## Decision-making on individual cases

The use of vignettes with members of frontline staff provided the opportunity to examine how eligibility criteria were applied to applicants in different circumstances. Factors which were found to be particularly significant were financial need, cost effectiveness (to the local authority) and applicant conduct.

While financial need was a key consideration for all participating local authorities, other factors such as cost effectiveness were also at play. In some cases, the meeting of need and cost efficiency were viewed as mutually reinforcing. In the Northern authority, key informants reported that the decision to top-up was motivated both by a desire to assist residents in need and to save council funds by avoiding evictions and homelessness cases. They reported that cost effectiveness was a key reason for the buy-in of council members for this approach to spending. Additionally, participants from both the Northern and London councils noted cost-effectiveness as a reason to maintain applicants like Joanne in their adapted homes. This position likely also reflects the housing pressures faced by both authorities which would make finding a suitable one-bedroom property highly unlikely. Consequently, both authorities might be required to pay for adaptations if Joanne were to move to a smaller property.

In some cases, however, it appears that other factors play a dominant role. In the Eastern authority, DHP was viewed primarily as a short-term solution with long-term awards likely to be made only in very exceptional circumstances. Even in the case of Joanne, participants viewed DHP as a time-limited solution and suggested a range of behavioural changes that might improve her situation. This may in part reflect the greater availability of one-bedroom accessible properties in the area but arguably also reflects a view of DHP primarily as a means to facilitate behavioural change rather than to meet need. In the London Borough, policies were in place to protect priority groups who were considered to be particularly vulnerable such as applicants in receipt of DLA or PIP. Some voluntary sector participants felt that consequently pure financial need was not recognised as a reason for awarding DHP, with the limited funding available exhausted on meeting the needs of priority groups particularly disabled people and single-parent families.

Approaches to behavioural conditionality varied widely between the case study areas, seemingly reflecting different ideological differences and local contexts. The strictest approach to conditionality was reported by the Eastern authority where failure to meet behavioural conditions could lead to the withdrawal of a DHP award and potentially to the applicant being moved to a lower priority band on the housing register. Use of conditionality was explicitly recognised by senior staff who felt that it helped applicants to become independent by improving their financial circumstances. However, the extent to which this approach was applied in practice was called into question by the responses of participants from external organisations, who had not picked up on any use of conditional awards. It may be that given the apparent sufficiency of funding, frontline staff are more lenient in practice or that conditions are applied informally through social pressure and not detailed in award letters.

The approach in the Northern authority was lighter-touch and participants emphasised the barriers faced by applicants in changing their financial circumstances. In this authority, all applicants are advised of the availability of local support in the first instance. Conditions of conduct would generally only be applied for second or subsequent applications and even there appears to be a degree of flexibility as to whether and how they are applied. In addition, the Northern council was the only authority to accept ongoing expenditure on items generally perceived as non-essential (albeit at a limited level). This seemingly reflects a recognition of the value of leisure as well as the freedom to organise one's own financial arrangements. This approach was likely aided by the availability of additional funds beyond the central government grant.

In the London Borough, it appeared that conditionality was used to manage high levels of demand for DHP by filtering out applicants. Firstly, applicants affected by LHA reforms such as Sam and applicants reporting non-essential spending appears more likely to be refused at the first instance than in either the Northern or Eastern authorities. In these cases, evidence of undesirable conduct is being used as a reason to reject an application outright rather than to grant a short-term award with the aim of facilitating a behavioural change. Secondly, even where an application is successful, a

prescribed behaviour may be unlikely to achieve a significant change in the applicant's circumstances. This was arguably the case in relation to Layla. Participants reported that few applicants in a similar position would be in work at all, but indicated that Layla would be required to seek additional hours.

## The implications for wider policy debates

Finally, data from all participants as well the literature review provided the basis for consideration of the wider policy debates surrounding DHP as well as wider discussions about localism, discretion and conditionality in the UK welfare state. In particular, issues emerged around the concepts of equity, adequacy and accountability.

### a) Horizontal Inequity

The provision of DHP through a local and discretionary system rather than through a national, rules-based system has inevitably led to horizontal inequity. Evidence from this study suggests that applicants in the same circumstances could be treated very differently depending on their geographic location. This may be partly caused by differences in local circumstances, such as the availability of social housing or levels of unemployment but is also influenced by local policies and practices. This was particularly evident in the case of Joanne, where there was a high degree of variation between local authorities. While the London and Northern authorities were very likely to award a long-term award, participants from the Eastern authority favoured a short-term award and would expect Joanne to look for alternative accommodation. While this could be explained by the greater availability of accessible social housing, this approach is also likely influenced by a general view of DHP as transitional and a means to increase 'independence'. In addition, differences in the sufficiency of funding are also likely leading to variation between authorities. While approaches to Sam were more closely aligned, the London Borough diverged as being more likely to refuse an award in the first instance. This was arguably due to the use behavioural conditionality as a means to filter applications and manage particularly high levels of demand.

### b) Unmet Need

While DHP spending data has been interpreted by some Parliamentarians as reflective of local need, the findings of this study suggest that the relationship is not so straight-forward. Firstly, participants generally reported that residents were often unaware of DHP. The publicity efforts made by local authorities, as well as the availability of local advice services may influence demand for DHP and lower spends may therefore indicate a lack of awareness of the scheme rather than the absence of need. Secondly, there appears to be a high degree of variation in the generosity of local policies. This was evident from the responses to Vignette 1, Joanne. While the Eastern authority was likely to make only a short-term grant, the other case study authorities would likely make a much longer award. Local policies and practices in relation to DHP will therefore likely play a role in the authority's level of spending. However, the level of funding available also appears to influence local policies and practices as authorities may take a stricter approach when funding is felt to be more limited. For example, in the London authority, a higher level of demand for DHP seems to have resulted in a stricter approach to conditionality as a means to filter applications.

Nevertheless, concerns about the ability of central government funding to meet local needs were prevalent in both the metropolitan areas studied. In the Northern authority, senior staff and council members had felt it necessary to significantly top-up their allocation and even so had concerns about the adequacy of funding. This is notable, given the comprehensive approach to publicity taken by the authority which is likely to have increased effective demand for DHP. In the London Borough there were particularly high levels of demand despite their cautious approach to publicity and some participants from the voluntary sector felt that some groups such as single people in good health had been crowded out from provision. The London Borough was aiming to spend 100% of the central government allowance and success rates were estimated to be around 20% in recent months. It therefore appeared unlikely that the authority would be able to reach the success rate of the Eastern or Northern authorities (60% and 65% respectively) by changing their policies and practices without exceeding their spending limit.

The sharp divergence in success rates between authorities suggests that DWP funding formula does not accurately reflect need in those areas even when accounting for differences in local policies and practices. However, given both the exploratory nature of this study and the absence of detailed information about the formula it is difficult to reach any firm conclusions. While some of the administrative data which informs the formula is stated in DWP Housing Benefit circulars (e.g. DWP 2019), this cannot be comprehensive because it does not reference local authority spending in previous financial years which has also been stated to play a role in the funding allocation (DWP 2018b). In theory, the formula takes into account local housing and employment markets to some extent as these will affect the number of residents affected by welfare reform. For example, where the demand for labour is high, fewer residents should be affected by the benefit cap as they are more likely to be in employment (of more than 16 hours). Nevertheless, concerns remain that the formula does not adequately capture local need (LGA 2018). While the DWP does consult with local authority associations (DWP 2018), arguably more detailed information should be publicly available and consultation widened to include other stakeholders.

### c) Accountability Deficit

While managerial and professional forms of accountability were employed in all case study areas, forms of participatory accountability were more limited. On the one hand, the flexibility of decision-making (particularly in the Eastern and Northern authorities) arguably allows applicants greater influence on decision-making through individual advocacy. However, as noted by Homeless Link (Parliament, House of Commons 2016c), some groups may be less able to effectively argue their case, potentially leading to a double disadvantage where appropriate support is not provided. In addition, the decision to increase DHP funding rather than create exemptions from reforms in Housing Benefit regulations removes a legal form of participant accountability - a tribunal appeal. The remaining discretionary review procedures are not mandatory (although all case authorities employed them) and were found unlikely to result in the reversal of a decision unless the applicant's circumstances had changed.

Furthermore, there are barriers to the exercise of wider democratic forms of participatory accountability caused in part by the discretionary nature of the scheme. None of the local authorities reported holding public consultations about DHP, although some mentioned general consultations with housing associations and voluntary sector organisations. This may be due to a reluctance to settle on or discuss policy positions for fear of appearing to fetter discretion or a concern not to deter applicants who incorrectly perceive that they are not covered by the local policy. Nevertheless, it reduces opportunities for the public to comment on or influence local policies. Wider attempts to monitor and evaluate DHP may also be frustrated by a lack of publicly available information. Local authorities may have policies and practices which are not written down or are not publicly available and a significant minority of authorities do not provide full data returns to the DWP. While additional data is sometimes collected in the Local Authority Insight Survey series, this is currently sporadic and also affected by non-response. These factors challenge the argument that the localisation of emergency welfare will lead to an increase in public control on decision-making.

## Policy Implications

Despite the challenges raised by the increasingly prominent role of the DHP, there is no doubt that it remains a crucial resource for homelessness prevention in the context of welfare benefit cuts. Participants from all local authorities felt that DHP was a vital local resource and were concerned to either maintain local control over the scheme or to increase the levels of funding available from central government. This reflects findings of the Homelessness Monitor (Fitzpatrick et al 2017), in which local authority participants emphasised the positive role of DHP and other forms of discretionary assistance in preventing homelessness (although funding limitations were also noted). Participants from social housing providers and advice services similarly reported that receipt of DHP was highly beneficial to their clients in ameliorating a housing crisis, although some emphasised its temporary and discretionary nature. In this context, there are broadly three approaches to policy reform which could either reduce the underlying need for DHP or enhance the ability of the scheme to prevent arrears and eviction for low-income households.



First, the reversal of some or all Housing Benefit reforms would significantly reduce the need for DHP. As noted in Section 1, the majority of DHP funding is allocated to mitigate the Housing Benefit deductions through which welfare cuts have been effected. If these cuts were reversed, mitigation in the form of DHP at the scale now seen would no longer be necessary. Nonetheless, DHP would likely still serve a valuable purpose by meeting financial needs caused by other factors besides welfare reform. This approach would be particularly attractive to defenders of a national welfare safety net as it represents the re-centralisation of responsibility for minimum income protection as well as a shift from discretion to entitlement. This step would also address issues of transparency and horizontal inequity, by eliminating or at least substantially reducing local variation and ensuring eligibility criteria are codified in publicly accessible regulations. However, this seems highly unlikely under the present administration, which thus far seems minded to make only minor concessions on welfare policy. In the 2019 Spring Statement, for example, it was announced that the freeze on mainstream welfare benefits would be maintained for the fourth year in a row (Institute for Fiscal Studies 2019), despite lobbying to the contrary by civil society organisations (e.g. Joseph Rowntree Foundation 2019).

Second, if welfare reforms were not reversed, as seems unlikely at least in the foreseeable future, further exceptions could be codified within the Housing Benefit and Universal Credit regulations. There is precedent for this approach where courts have ruled that a reform discriminates against a particular group. Following the Supreme Court decision of *R (on the application of Rutherford) v Secretary of State for Work and Pensions* (2017), the Housing Benefit rules were amended to exempt households requiring an additional bedroom for overnight carers as well as couples who cannot share a room due to disability. The DWP guidance document refers to several priority groups who are not currently exempt from Housing Benefit reform but to whom local authorities are asked to pay special attention. These include “disabled people living in significantly adapted accommodation” and adoptive and foster parents. Arguably these groups and others who have a clear reason to retain an additional bedroom (for example, parents with joint custody arrangements) should be sheltered from the SSSC as a matter of course. This logic could also be extended to other groups less able to avoid the impact of the Benefit Cap such as parents with young children (which is currently the subject of an ongoing legal challenge).

The creation of new exceptions of this kind would reduce the need for DHP in line with the scope of exemptions and accordingly funding for DHP could be reduced. This approach has similar benefits to the reversal of welfare reforms, creating increased certainty for affected groups and improving consistency and transparency. Nevertheless, it could be argued that the use of exemptions reduces local flexibility and may lead to groups not protected in this manner losing out. This may particularly affect groups who are less typically viewed as ‘vulnerable’, such as single people without significant health problems. Again, however, for the political reasons set out above, the likelihood that this approach will be adopted by central government appears low.

Third, given the unlikelihood of either the reversal of welfare reforms or the codification of significant exemptions to specific reforms, it is necessary to consider whether improvements to the DHP scheme could be made to reflect its seemingly ‘permanent’, or at least long-term role in the UK welfare state and its significant role in eviction and homelessness prevention.

## Recommendations

### Recommendations for Central Government:

- The DWP should strongly recommend the following as good practice in the DHP Guidance Manual. Local authorities should provide detailed information on local policies and practices online in an easily accessible format. This should go beyond the regulatory framework for DHP and describe the authority's approach to financial assessment, behavioural conditionality and award length as well as identifying any priority groups.
- The DWP should promote the following as best practice in the 'Good Practice Guide' appended to the DHP Guidance Manual: 1. Local authorities should collect the following data about both successful and unsuccessful applications: housing tenure, benefit receipt and whether it is the first or a subsequent application. 2. In addition, local authorities should record the reasons for any rejections or withdrawals and details of any conditions or expected behaviours imposed. 3. Local authorities should use data collected to monitor access to DHP between different groups and undertake targeted publicity campaigns to reach under-represented groups.
- The DWP should explore expanding the scope of requests for data to include some of the information detailed above. A priority should be the collection of the number of applications and application success rates to inform discussions around equity and adequacy.
- The DWP should publish clear and comprehensive information describing how allocations are calculated, including all factors considered and their relative weighting. Existing consultation processes should be widened to include other stakeholders including relevant advocacy groups.
- The Central Government should consider increasing funding for the administrative costs incurred by local authorities in the administration of DHP through the New Burdens scheme. This should include the costs of data collection, monitoring and publicity.

### Recommendations for Local Government:

- Council members and relevant senior staff should consider carefully whether topping-up their DHP allocations could either a) prevent homeless, b) serve other local policy priorities or c) be beneficial in terms of cost-effectiveness.
- Senior members of staff should consider whether they are able to collect additional data to monitor access to DHP by groups who may be at risk of losing out. This will likely vary by area but could include, Universal Credit recipients, private tenants and older residents less able to use the internet. Where groups are found to be under-represented in the applicant pool, action should be taken in the form of targeted campaigns.
- Senior members of staff should consider whether the information they provide about DHP online and in other formats is sufficiently detailed to guide applicants and their advisors. In particular, they should highlight any behavioural conditions which might be imposed.

### Recommendations for other stakeholders:

- Stakeholders with strong relationships with local government should encourage local authorities who are not topping-up their funds to consider doing so. Advocacy should be conducted with Council members and relevant senior staff members emphasising the potential benefits of topping-up such as eviction prevention and reduced pressure on homelessness services.



- Stakeholders with concerns about the impact of Housing Benefit reform on particular groups could engage directly with local authorities to clarify local policies and practices and advocate for change where appropriate.

### Recommendations for further research:

- Further primary qualitative research should be carried out with service users to examine the impact of the application process, the imposition of behavioural conditional and the consequences of rejection.
- This could be incorporated into a larger study of the implementation of DHP (or local welfare benefits in general) which encompasses a wider range of local authority types than those examined in this study including authorities in Northern Ireland, Scotland and Wales.
- Further quantitative analysis should also be conducted. This should include an independent evaluation of the extent to which the current DWP funding formula meets need and is responsive to local conditions

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## About the I-SPHERE / Oak Foundation Internship Programme

The Oak Foundation is an international philanthropic foundation funding projects in conservation, human rights, abuse, housing, learning disabilities, and other social justice issues. In its Housing and Homelessness Programme, the Foundation focuses on preventing homelessness by funding sustainable solutions that improve the economic and social wellbeing of marginalised youth, adults and families. The programme has three priorities: promoting economic self-sufficiency; increasing the availability and supply of affordable housing; and preventing homelessness. The Institute of Social Policy, Housing and Equalities Research (I-SPHERE) at Heriot-Watt University is a leading UK research centre in the fields of housing, poverty and social policy with a strong international reputation. I-SPHERE staff specialise in research on homelessness, destitution, complex needs and other forms of severe disadvantage.

Oak Foundation and I-SPHERE run an internship programme to support the development of a stream of early career researchers to undertake high quality policy and practice applied research on homelessness. The dual purpose is to increase the availability of well qualified researchers and to develop the evidence base for policy makers and practitioners on 'what works' in this sector.

### About the Author

Megan Park has a background in law and worked in a legal aid practice assisting clients faced with eviction, homelessness or poor-quality housing. Interested in the wider policy issues surrounding housing and the welfare state, she did an MSc in Social Policy at the London School of Economics, focused on social security and inequalities. Following her Oak internship, Megan is moving onto another research intern role to continue to develop her research skills and interests..

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