



BRIEFING PAPER

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Discretionary Housing Payments

By Wendy Wilson

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Summary

Where a claimant is eligible for Housing Benefit but experiences a shortfall between the rent due and the Housing Benefit payable (e.g. because they live in a property that is deemed to be too large for their needs, or the rent charged is higher than the Local Housing Allowance rate) they can apply to the local authority for a Discretionary Housing Payment (DHP).

There is no obligation on authorities to pay DHPs. The Department for Work and Pensions (DWP) has issued [guidance](#) for authorities (updated in April 2014) but the method of allocation adopted and decision making process lies with local authorities.

Increasing the level of funding for DHPs was one of the ways in which the Coalition Government sought to mitigate the impact of some of the reductions to Housing Benefit entitlement introduced between 2010 and 2015. These reductions included the under-occupation deduction for working-age claimants in social housing (also referred to as the 'Removal of the Spare Room Subsidy' or 'bedroom tax'), the household Benefit Cap and reforms to the Local Housing Allowance (for claimants in private rented housing). Both the Scottish and Welsh Governments took steps to increase DHP funding. Measures in the *Scotland Bill* will give the Scottish Parliament legislative competence to develop its own DHP scheme.

Evidence on the use of DHPs has raised questions around the adoption of different practices by local authorities – leading to allegations of a 'postcode lottery.' There are references to disabled tenants (particularly those living in adapted properties) struggling to access DHPs in some areas, coupled with issues around the need to submit repeat applications and the consequent uncertainty and anxiety associated with this. The adequacy of the overall level of DHP funding has also been questioned.

Information on the implementation of the under-occupation deduction from Housing Benefit in social housing can be found in Library briefing paper 06272, [Under-occupation of social housing: Housing Benefit entitlement](#). A further briefing paper considers evidence on the impact of the under-occupation deduction: 06896, [The impact of the under-occupation deduction from Housing Benefit \(social rented housing\)](#).

1. Eligibility for DHPs

One option for Housing Benefit (HB) claimants who experience a shortfall between the rent due and their Housing Benefit entitlement is to apply to their local authority for a Discretionary Housing Payment (DHP). To qualify for a DHP the only requirement is that there must be a shortfall between HB entitlement and the rent, but the council will usually take into account special circumstances contributing to financial difficulties.

Local authorities are not under any duty to make a DHP and they are generally not paid in perpetuity. [The Discretionary Housing Payments Guidance Manual and good practice guide for local authorities](#) was updated and reissued in April 2014.

2. DHP funding

In order to mitigate the impact of some of the reductions to Housing Benefit entitlement arising from the under-occupation deduction in social housing (also referred to as the Removal of the Spare Room Subsidy or bedroom tax), the household Benefit Cap and reforms to the Local Housing Allowance (for claimants in private rented housing), the Government increased the funding available for DHPs. It was never the intention that DHPs would mitigate the full impact of reductions in HB entitlement:

	2012/13	2013/14	2014/15	2015/16
Baseline funding	£20m	£20m	£20m	£15m
LHA reforms	£40m	£40m	£40m	£25m
Social size criteria		£30m (increased to £55m)	£30m (increased to £60m)	£60m
Benefit cap		(Up to) £65m	(Up to) £35m (increased to £45m)	£25m
Total	£60m	£155m (increased to £180m)	£125m (increased to £165m)	£125m

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Local authorities are permitted to contribute two and a half times the Government contribution to DHPs.¹ The distribution of DHP funding in 2015/16 is set out in DWP [HB S1/2015: Discretionary Housing Payments government contribution for tax year 2015 to 2016](#).

This Circular also explains the distribution formula behind the allocation of DHPs. Authorities are required to return any unspent DHP allocation to the Government at the end of each financial year.

During the passage of the *Welfare Reform Act 2012* through Parliament, several amendments were proposed in an attempt to secure exemptions from the under-occupation provisions for various groups, including disabled tenants of adapted properties and foster carers. Baroness Wilkins drew attention to the [21st Report of the Joint Committee on Human Rights](#) in which it considered the *Welfare Reform Bill* and recommended “additional discretion to exempt disabled people facing exceptional hardship from the under-occupation provisions.”²

The Government resisted amendments to the Bill but announced an additional £30m (annually from 2013/14) for DHPs aimed at two groups:

- £25m for disabled people who live in significantly adapted accommodation to enable them to remain in their existing homes; and
- £5m for foster carers who need to keep an extra room for when they are in between fostering.

It was estimated that this £30m would help around 40,000 cases based on an average reduction of £14 per week. The estimate was based on a group of 35,000 potentially affected claimants who are wheelchair users and who live in adapted accommodation and an estimate of around 5,000 foster carers (note that approved foster carers with one spare room were subsequently exempted from the size criteria³). Lord Freud said the sum available would be kept under review.⁴

DHPs are not ring-fenced for particular groups:

...we have allocated money to local authorities to reflect the two key groups that came up in debates in this House, but we have not ring-fenced the money. That is the important point. We have indicated two groups who clearly have a strong case for discretionary support. But the key word is “discretionary”. Therefore a local authority will be able to take the discretionary payments for the social housing under-occupation, the discretionary payments for the private sector rent 30% rule and the discretionary payments associated with the benefit cap. All of those things will come together and will be a discretionary pot for a local authority to tailor to their local and individual needs. We recognise that every constituency is different, which is why we are

¹ Note that this ‘cap’ no longer applies in Scotland.

² HL Deb 14 December 2011 c1312

³ Although the Government said that the £5m in DHPs allowed for this group would no longer apply, the overall sum of £30m in DHPs for 2013/14 remained unchanged according to DWP circulars.

⁴ HL Deb 14 February 2012 c720

giving local authorities, such as his, the flexibility to use that money to meet individual local circumstances.⁵

On 30 July 2013 the DWP announced additional in-year funding of £35m for local authorities “to help claimants affected by changes to housing benefit in the social sector who need extra support.”⁶ The £35m funding consisted of:

- £10m transitional payments distributed to all councils;
- £5m discretionary housing payment funding for the least densely populated areas in the country; and
- a new £20m discretionary housing payment fund.⁷

A DWP press release provided the following information on this funding:

£10m transitional payments will provide flexible funding for local authorities. It will be distributed to councils based on working age social sector caseload, rent levels and regional levels of under-occupation.

£20m additional funding will be available for councils, if they can demonstrate that they are managing their discretionary housing payment allocation in a robust, fair and appropriate manner.⁸

£5m funding to rural areas will be provided to the 21 most sparsely populated areas in the country. Additional guidance for local authorities will be developed to help direct support to claimants living in isolated rural communities.⁹

This brought the total sum available for DHPs in 2013/14 to £160m (plus the £20m which was subject to a bidding process¹⁰). [HB Circular S6/2013](#) contained revised information on local authorities’ DHP allocations for 2013/14 following the 30 July 2013 announcement. A further circular, [HB Circular S3/2014](#), was issued in March 2014 which set out the total funding available to each authority and the final overall expenditure limit in 2013/14 – appendix A details those authorities who received money from the £20m reserve fund and the amount received.

[HB Circular S3/2014](#) also advised that the Government intended to amend the *Discretionary Housing Payments (Grants) Order 2001*:

An amendment to the ‘Discretionary Housing Payments (Grants) Order 2001’ will be made with retroactive effect from April 2013, to clarify that the overall 2.5 times expenditure limit will be based on total central government contributions awarded for the year in question, rather than the contribution awarded at the start of the year.¹¹

The [Autumn Statement 2013](#) contained information on future funding for DHPs:

Discretionary Housing Payments 2014-15 and 2015-16 – The government will increase DHPs by £40 million in both 2014-15

⁵ [First Delegated Legislation Committee](#), 16 October 2012, c27

⁶ [DWP Press Release](#), 30 July 2013

⁷ *ibid*

⁸ Local authorities will be required to bid for this additional funding.

⁹ *ibid*

¹⁰ An invitation to bid was issued by the DWP in September 2013, see: [HB Circular A18/2013](#)

¹¹ [HB Circular S3/2014](#), 24 March 2014, para 5

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and 2015-16. This will ensure the pot of DHPs available to support those affected by under-occupancy deductions will not be reduced for the next 2 years, giving councils discretion to make longer term awards. Funding of DHPs will be met from DWP's budget from 2014-15.¹²

Total DHP funding in 2014/15 was £165m;¹³ each authority's allocation was set out in [Housing Benefit Subsidy Circular S1/2014](#).

Actual DHP funding in 2015/16 has been reduced by £40m, although the sum included specifically to support under-occupation deductions has remained at £60m. When questioned on the DHP reduction, a DWP spokesperson reportedly referred to the decision to increase targeted funding for LHA claimants in 2015/16 by £50m (to £95m) through increasing LHA rates by 4% in areas with the highest differences between LHA rates and market rents.¹⁴ PQs have explored the impact of the reduction in support for DHPs:

Paul Flynn (Newport West) (Lab): What assessment he has made of the potential effect on people subject to the under-occupancy penalty of a reduction in funding for discretionary housing payments in 2015-16.

The Minister for Disabled People (Mr Mark Harper): We have actually increased the funding for discretionary housing payments to help those who are affected by the removal of the spare room subsidy, and, as the Chancellor announced in the autumn statement, it will be protected in 2015-16.

Paul Flynn: Does the Minister agree with the Child Poverty Action Group, which has said that any degradation of discretionary housing payments will threaten to "cut the parachute cord" that keeps so many vulnerable families from the homelessness and destitution created by the foul bedroom tax? Will he give an absolute guarantee that the payments will be not only maintained in real terms, but possibly increased when necessary, and ring-fenced?

Mr Harper: If the hon. Gentleman had listened to my answer, he would have heard me say that the level of discretionary housing payments relating to the removal of the spare room subsidy would be maintained in 2015-16, as the Chancellor said in the autumn statement. I listened carefully to the hon. Gentleman's point of order about questions and answers last week. I think that my answer did relate to his question, and perhaps he should have listened to it.¹⁵

The National Audit Office's (NAO) November 2012 report, [Managing the impact of Housing Benefit reform](#)¹⁶ criticised the process for determining the level of DHP funding:

Over the Spending Review period the Department has set aside up to £390 million of funding for Discretionary Housing Payments for local authorities to tackle transitional consequences of reforms.

¹² Treasury, [Autumn Statement 2013](#), 5 December 2013, para 2.71

¹³ [HC Deb 15 January 2014 c583W](#) (this Written Answer contains a table setting out annual DHP funding since 2001-02 up to 2014-15)

¹⁴ *Inside Housing*, "DWP cuts discretionary housing payments by £40m," 30 January 2015

¹⁵ HC Deb 9 March 2015 cc8-9

¹⁶ HC 681, Session 2012-13, 1 November 2012

Funding can also be topped up by local authorities. It is not clear how the overall level of funding has been determined or whether it is likely to be sufficient to tackle the effects of reforms. The total amount represents six per cent of the total savings expected from the Housing Benefit reforms over the Spending Review period, or around £200 per household affected.¹⁷

The NAO called for clarification on the process for determining levels of DHP funding; a review of their allocation to authorities; and improved understanding on how DHPs are used.

The DWP confirmed that it would require authorities to monitor how DHPs are used:

Where a DHP has been made to a claimant affected by one of the three policy changes set out above, LAs will be required to record this and provide a twice yearly return to DWP. The guidance manual provides further details on the type of information LAs should record and how this information will be collected.¹⁸

3. Evidence on use of DHPs

Starting in 2013-14, local authorities were requested to provide details to DWP of their use of DHP funds. This information is being collected twice yearly, in the middle and at the end of the financial year.

The DWP published a statistical release, [Use of Discretionary Housing Payments](#), summarising information in monitoring returns for the 2013-14 financial year in June 2014. The most recent [release](#) covers the period from April to September 2014.¹⁹

Table 7 in [Use of Discretionary Housing Payments 2013-14](#) shows the number of awards by the expected purpose of the award (this table was not included in the April to September 2014 release):

¹⁷ Ibid, para 20

¹⁸ DWP [Consultation exercise](#) August 2012

¹⁹ DWP, [Use of Discretionary Housing Payments GB: analysis of mid-year returns from local authorities, April to September 2014](#), December 2014

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Expected outcome	Number of awards	Percentage of total awards
Help to secure a move to alternative accommodation (e.g. rent deposit)	24,938	7%
Help with short-term rental costs until claimant is able to move to alternative accommodation.	100,248	26%
Help with short-term rental costs while claimant seeks employment.	36,383	9%
Help with ongoing rental costs for disabled person in adapted accommodation.	14,000	4%
Help with ongoing rental costs for foster carer.	667	<0.5%
Help with short-term rental costs for any other reason.	207,031	54%
Total	383,267	100%

Source: DHP returns for period April 2013 to March 2014

At the end of the 2013-14 financial year, 240 out of 380 local authorities across Great Britain under-spent their DHP allocations by £13,285,430 against the available Government contribution. A total of 13 authorities spent exactly 100 per cent of their DHP allocation, while 127 overspent by £16,791,012 against the available government contribution.²⁰ The April to September 2014 [statistics on DHPs](#) found that, of the authorities submitting returns, a majority had spent less than 50% of their DHP allocation. Excluding Scotland, 52% of authorities had spent their full year Government allocation – this figure was 65% when Scottish authorities were included. Over this period, in GB as a whole authorities spent 56% of DHPs on mitigating the under-occupation deduction and 16% on mitigation of the Benefit Cap.²¹

²⁰ DWP, [Use of Discretionary Housing Payments, June 2014, para 22](#)

²¹ DWP, [Use of Discretionary Housing Payments GB: analysis of mid-year returns from local authorities, April to September 2014](#), December 2014

There have been several references to something of a 'postcode lottery' in terms of access to DHPs:

Many witnesses reported that the level of discretion allowed to local authorities in managing DHPs was creating too much variation in decision-making and leading to a "postcode lottery" whereby households with similar circumstances would receive different DHP decisions because of where they lived. Witnesses also described variation in local authorities' priorities for DHP; for example, some LAs prioritised households in temporary accommodation over other households. Some LAs are also placing conditions on payments, such as requiring claimants to meet some of the shortfall themselves.²²

Inside Housing attributed this problem to how the funds had been allocated by DWP. The initial allocation of DHPs for 2013-14 included a higher proportion of funding in respect of changes to the Local Housing Allowance and Benefit Cap – both measures which impact more in the south whereas under-occupation of social housing is more prevalent in the northern regions:

Redcar and Cleveland Council received an initial allocation of £308,690, which was topped up by £110,000 in February. With this money, it was expected to deal with 2,313 applications - effectively giving it £181 per application.

Meanwhile, in Conservative-led Wandsworth, £1.83 million of funding was spread between 1,629 applications - effectively £1,129 per application. It turned down just 386 applications but at the end of the year returned £500,000 to the Treasury.²³

Particular concern was raised in relation to local authorities taking disability benefits into account when means testing DHP applications. The DWP guidance gives authorities the option of disregarding these benefits but the final decision lies with the authority.²⁴ Independent research carried out on behalf of the DWP acknowledged these issues:

A key concern raised by landlords and local agencies is that disabled people in adapted homes have not always been awarded DHP because disability benefits, which are intended to help with some of the extra costs of having a long-term disability or health condition, can cause them to fail means tests based on their income. Local agencies are also concerned about some groups who fail to apply for DHP, or fail to adequately evidence their application, especially those with mental health difficulties. More than half (56 per cent) of RSRS-claimants surveyed who have not applied for DHP said they were not aware of it. The claimants who were unaware of DHP were similarly likely to other claimants to report having difficulties paying rent and similarly likely to be in arrears.²⁵

As part of the DWP sponsored research authorities were asked about their approach to means-testing DHPs and whether they took account of Disability Living Allowance:

²² HC 720, Work and Pensions Select Committee, Fourth Report of 2013-14, [Support for housing costs in the reformed welfare system](#), 2 April 2014, para 138

²³ *ibid*

²⁴ DWP, [The Discretionary Housing Payments Guidance Manual and good practice guide for local authorities, April 2014, para 3.9](#)

²⁵ DWP [Removal of the Spare Room Subsidy: interim evaluation report](#), July 2014, p15

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...the large majority of local authorities reported that they always carried out a means test, and most of these included DLA where they deemed it appropriate to do so. DLA is a benefit to help people meet some of the extra costs of living with a long-term health condition or disability. Some voluntary sector agencies and landlords interviewed expressed concerns that disabled people were not always adequately demonstrating the ways in which they needed their DLA to cope with their disability on their DHP application forms.²⁶

The Work and Pensions Select Committee recommended that the Government should issue “revised guidance to local authorities which advises them to disregard disability benefits in means tests to assess eligibility for DHP awards.”²⁷ The matter has now been overtaken by the High Court decision in [*Hardy, R \(on the application of\) v Sandwell Metropolitan Borough Council*](#).²⁸ The court held that Sandwell Council’s policy of always taking account of Disability Living Allowance (DLA) when assessing DHP awards “fails to have due regard to the DHP guidance, constitutes a failure to exercise the council’s discretion and fetters any future exercise of that discretion.” This finding has implications for other councils (estimated at around 75%) which always take account of DLA when determining DHP applications.

The Work and Pensions Select Committee also took evidence from Carers UK and Homeless Link indicating a reluctance amongst some authorities to grant DHPs to claimants who do not have an ‘exit strategy’ such as moving house or entering work. There is evidence of authorities using DHPs as a longer term solution to households who cannot move, such as those in adapted accommodation, but the need for these claimants to make repeat applications is a source of anxiety.²⁹ When announcing DHP funding for 2015-16 the Government made reference to giving authorities confidence to make long-term awards where appropriate.³⁰ The Select Committee declared this guidance to be “not strong or explicit enough” and recommended new guidance be issued making clear the Government’s support for long-term awards and need to avoid re-applications for certain specified categories of claimant. The Committee also called for the impact of these long-term awards to be taken into account when deciding on DHP funding beyond 2014-2015 – the Committee favoured a three-year funding period to aid effective planning.³¹ At the time of writing the Government’s response had not been published.³²

²⁶ Ibid, p42

²⁷ HC 720, Work and Pensions Select Committee, Fourth Report of 2013-14, [Support for housing costs in the reformed welfare system](#), 2 April 2014, para 141

²⁸ [2015] EWHC 890

²⁹ HC 720, Work and Pensions Select Committee, Fourth Report of 2013-14, [Support for housing costs in the reformed welfare system](#), 2 April 2014, para 142

³⁰ HB Circular S1/2014

³¹ HC 720, Work and Pensions Select Committee, Fourth Report of 2013-14, [Support for housing costs in the reformed welfare system](#), 2 April 2014, para 145

³² The then Minister, Mark Harper, explained that the delay in publishing the response was “due to a failure to secure agreement across the Government” to the contents of the draft. He said “I am afraid harmony has not broken out and, until it does, the Government will not be able to respond to the Committee. [HC Deb 3 March 2015 c878]

Concerns around the impact of HB restrictions on disabled people and the variable response to DHP applications have been repeated in several research studies. For example, in [Housing benefit size criteria: impacts for social sector tenants and options for reform](#) (April 2014) the Joseph Rowntree Foundation found:

Councils are making full use of Discretionary Housing Payments (DHPs) to help tenants adjust to the change. However, practice varies. There are concerns about whether current DHP provisions are appropriate for disabled tenants living in adapted homes.³³

The first detailed report based on work carried out by Ipsos MORI on behalf of the National Housing Federation was published in February 2014: [Impact of welfare reforms on housing associations: early effects and responses by landlords and tenants](#). On DHPs the researchers found:

- Housing associations estimate that on average almost a quarter (24%) of those currently affected by the size criteria have made a DHP claim. Of these, around two-thirds (63%) have been successful – equivalent to 15% of all those currently affected.
- A fifth of those who have been awarded a DHP are living in an adapted property.
- Housing association perceptions of the ease with which tenants have managed the DHP application process are divided. Around a third (34%) of associations say that the process has been easy, with slightly more (37%) reporting it has been difficult.³⁴

The final report in the series was published in January 2015: [Welfare reform impact assessment: Final report](#). Housing associations were reporting a slowdown in the number of successful DHP applications:

It is not clear at this stage the extent to which impacts on arrears levels have been mitigated by Discretionary Housing Payments (DHP). However, associations are reporting a slowdown in the number of successful DHP awards since the start of the 2014/15 financial year, which may have subsequent impacts on arrears levels in the future. Case study associations also reported that they expected arrears to increase as the financial resilience of tenants is further eroded.³⁵

The Housing Committee of the London Assembly published [Assessing the consequences of welfare reform](#) in April 2014. Observations on DHPs are reproduced below:

Concerns have been raised regarding the choices boroughs have made on awarding DHPs. It is not, sometimes, clear why one household is awarded DHPs and another has been refused. The way funding has been allocated varies both between boroughs

³³ JRF, [Housing benefit size criteria: impacts for social sector tenants and options for reform](#), April 2014

³⁴ Ipsos MORI for the NHF, [Impact of welfare reforms on housing associations: early effects and responses by landlords and tenants](#), February 2014

³⁵ Ipsos MORI for the NHF, [Welfare reform impact assessment: Final report](#), January 2015, p7

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and within individual boroughs, for ostensibly comparable households.

Despite these concerns about local variability, boroughs are keen to maintain a locally-led process. They argue this is fundamental to DHP being awarded according to local need and they offer a defence for DHP spending in 2013/14 being particularly varied for a number of reasons: their discretionary nature, delayed implementation of some reforms and uncertainty over future need. The Committee accepts that boroughs should lead on allocating DHPs, but calls on them to establish a greater level of predictability.³⁶

The Committee echoed the Work and Pension Select Committee in calling for clarity on future funding and questioned whether the transitional nature of DHPs represented an appropriate form of assistance for claimants with “a long-term enduring need.”³⁷

³⁶ London Assembly Housing Committee, [Assessing the consequences of welfare reform](#), April 2014, paras 2.41-2

³⁷ *Ibid* para 2.45

4. Scotland

The Scottish Government committed £20m in funding over 2013/14 to “limit the impact of the bedroom tax:”

In addition, this Government will take immediate steps to deal with the iniquitous effect of the bedroom tax. I will provide £20 million to fund Shelter Scotland’s proposal to help those struggling most with the cost of the tax. This funding will enable local authorities to increase discretionary housing payments to meet some of the implications of the Bedroom Tax.³⁸

This brought total DHP funding in Scotland over 2013/14 up to £35m (the maximum that could be provided under the rules at that point³⁹). In October 2013 the Scottish Government promised a further £20m for DHPs over 2014/15.⁴⁰

Then Deputy First Minister, Nicola Sturgeon, wrote to Lord Freud on 3 February 2014 asking for the ‘cap’ on DHP funding to be lifted; she said that the Scottish Government was willing to fund the additional £15m (bringing total DHP funding to £50m) to assist all 76,000 people in Scotland affected by the under-occupation deduction.⁴¹ Figures released at the end of January 2014 showed a fourfold increase in DHP claims in Scotland between April and November 2013 compared with the same period in 2012.⁴² [Statistics](#) on the number of DHP applications, determinations, awards and the total award values for each local authority in the financial years 2013/14 and 2014/15 can be found on the Scottish Government website.⁴³

The Scottish Affairs Committee launched an inquiry into the under-occupation deduction from HB on 8 May 2013. The Committee’s interim report, [The impact of the bedroom tax in Scotland: interim report](#) (December 2013) recommended the removal of the cap on local authority contributions to DHPs.⁴⁴

On 2 May 2014 David Mundell, Parliamentary Under-Secretary of State for Scotland, confirmed that Scottish Ministers *would* be given power to set the statutory cap on DHPs in Scotland:

The UK Government has legislated to provide local authorities across Great Britain with the ability to grant DHPs to support tenants in their area with housing costs not covered by Housing Benefit. As you will be aware, the UK Government provides a substantial contribution towards DHPs, which has increased to over £15 million in Scotland this financial year. Local Authorities are able to exercise broad discretion to determine how and when the money is distributed within each financial year, and are able to add to this contribution, subject to a formula-based cap. Powers for the Secretary of State to vary the cap are found in the Child Support, Pensions and Social Security Act 2000.

³⁸ [A budget for Scotland’s future](#), 9 September 2013

³⁹ Article 7 of *The Discretionary Housing Payment (Grants) Order 2001*

⁴⁰ *Inside Housing*, “£20m to help bedroom tax victims next year”, 21 October 2013

⁴¹ [Scottish Government Press Release](#), 3 February 2014

⁴² [Scottish Government Press Release](#), 21 January 2014

⁴³ [Discretionary Housing Payments in Scotland](#) [accessed on 30 June 2015]

⁴⁴ [HC 228, Fourth Report of 2013-14](#), 16 December 2013, para 47

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The Scottish Government has indicated that it would like to spend additional funds on DHPs in Scotland and following my direct programme of constructive engagement on welfare reform implementation with local authorities across Scotland, I have discussed this matter with colleagues in the Treasury and Department for Work and Pensions. As a consequence, I have written to the Scottish Government today to offer to provide Scottish Ministers with a power to set the statutory cap in Scotland. I propose to do so using section 63 of the Scotland Act 1998.

As you are aware, section 63 orders are a fundamental part of Scotland's flexible devolution settlement. They allow us to respond to situations of this sort in a pragmatic way. Devolution of the power to set the cap would enable the Scottish Government to set a separate cap for DHPs in Scotland. As you will be aware, this power will require agreement and cooperation between Scotland's two Governments and the approval of both the UK and Scottish Parliaments.⁴⁵

After David Mundell's announcement the Scottish Affairs Committee published [The Impact of the Bedroom Tax in Scotland: Devolving the DHP Cap](#) and commented:

We welcome the decision of the UK Government to allow Scottish Ministers to set the statutory cap on DHPs in Scotland. We also welcome the Scottish Government's commitment to make additional funding available for mitigation. We urge both Governments to expedite the necessary procedures which will enable the Scottish Government to lift the cap on DHPs in Scotland as quickly as possible. (Paragraph 7)

Meanwhile, in the interim period, we urge the Scottish Government to:

- i) make a clear commitment to provide sufficient funding to enable every Local Authority in Scotland to make DHP payments which will cover the full costs of the bedroom tax for all of those who have been affected by it.
- ii) make a commitment that any rental arrears which have been accumulated during this financial year, as a direct result of the bedroom tax, should be written off, and any additional rent paid as a consequence of the bedroom tax, should be refunded.
- iii) ensure that the process of application for such a refund is as simple as possible. (Paragraph 8)

We reiterate our view that if the Scottish Government is able to mitigate the impact of the bedroom tax in the current financial year, then it should also do so for the previous financial year (2013-14). Thus it should make additional funding available to ensure that all bedroom tax arrears are written off and, to avoid moral hazard, all bedroom tax payments made last year are refunded. It is essential that these issues are resolved and processes clarified as soon as possible. (Paragraph 9)⁴⁶

The procedure to transfer power to set the statutory cap on DHPs in Scotland is complete. The [Scotland Act 1998 \(Transfer of Functions to](#)

⁴⁵ [Letter from Rt Hon David Mundell MP, Parliamentary Under-Secretary of State for Scotland](#), 2 May 2014

⁴⁶ HC 1292, Fourteenth Report of 2013-14, [The Impact of the Bedroom Tax in Scotland: Devolving the DHP Cap](#), 20 May 2014

[*the Scottish Ministers etc\) Order 2014*](#) (SI2918/2014) came into force on 6 November 2014.

In the meantime, the Scottish Government and DWP issued local authorities with a [letter of comfort](#) confirming that they could plan to spend the full £50m (£35m Scottish Government contribution and £15m DWP contribution) on DHPs in 2014/15.⁴⁷ This £50m is a sum which the Scottish Government considered sufficient to fully mitigate the impact of the under-occupation deduction in 2014/15.

DWP allocations for DHPs in Scotland over 2015/16 have been reduced by £1.9m. In response, Margaret Burgess wrote to the Welfare Reform Committee on 24 February 2015 to set out the Scottish Government's intentions to mitigate the under-occupation deduction:

I want to reassure you that local authorities will still receive sufficient funding to fully compensate for bedroom tax losses in 2015/16. DWP's funding for DHPs covers four areas of support i.e. core funding, Local Housing Allowance (LHA), Benefit Cap, and Removal of the Spare Room Subsidy (RSRS), each local authority has been informed of their total allocation. The Local Government Finance (Scotland) Amendment Order 2015 will top up DHP funds to 80% of the estimated funding required to fully mitigate the bedroom tax. Following the publication of DWP statistics in May 2016 the Scottish Government will make further payments to each local authority to ensure that they receive the funding needed to cover their spending on bedroom tax mitigation for 2015/16.⁴⁸

How local authorities deal with outstanding arrears from the application of the under-occupation deduction in 2013/14; for example, by writing off arrears, is a matter for local authorities to decide.

The *Scotland Bill*, which is currently progressing through Parliament, contains measures which will transfer legislative competence to the Scottish Parliament such that it will be able to set up its own scheme in relation to DHPs, subject to certain limitations.

⁴⁷ [Letter issued to Scottish local authorities regarding section 63 Order](#), 25 June 2014

⁴⁸ Margaret Burgess letter to Welfare Reform Committee, 24 February 2015

5. Wales

The Welsh Affairs Committee held an inquiry into [The impact of Housing Benefit changes in Wales](#) the report of which was published in October 2013.⁴⁹ On DHPs the Committee recommended:

...that the Department for Work and Pensions carries out robust monitoring of the demand for DHP funding by social housing tenants affected by the under-occupancy policy, and monitors how local authorities are choosing to use this fund. This will help identify any particular shortfalls.

We call on the Government to clarify at the earliest opportunity the support that will be available to tenants through the Discretionary Housing Payments scheme after 2014– 2015.⁵⁰

The Government's response pointed out that an additional £2.6m in DHPs had been made available to Welsh authorities to mitigate the impact:

This means that Wales will receive a greater share of the total funding than its share of affected claimants. In addition, should Welsh local authorities need more funding, they can apply for funds from the £20 million reserve fund the Government has set up.⁵¹

The Minister for Housing and Regeneration approved additional funding of DHPs by Welsh local authorities in 2013-14 totalling £1,026,771:

Discretionary Housing Payments are made available by the UK Government to help people cope with the changes to Housing Benefit that are being made as a result of the UK Government's welfare reform policy. The Minister for Housing and Regeneration was asked to allocate additional funding for 2013-14 to allow local authorities to further develop their approach in order to prevent people from needing future support from the Discretionary Housing Payment Fund.⁵²

In April 2014 five Welsh Government Ministers [wrote](#) to Lord Freud calling for an exemption from the under-occupation deduction for disabled tenants who have had adaptations undertaken to their homes. They cited issues with DHPs as one of the reasons for needing this broad exemption:

Disabled tenants cannot easily up sticks and move home. They should be exempt from these reforms and should not be left to rely on help from the discretionary housing benefit system.

Our analysis of the discretionary housing payments system shows that demand far outweighs the number of applications being approved. In the first half of the financial year 2013/14 demand increased by around 260 per cent compared to the same period a year earlier in 15 Welsh local authorities.⁵³

⁴⁹ [HC 159, Second Report of Session 2013-14](#), October 2013

⁵⁰ *Ibid* paras 56-57

⁵¹ [HC 1012, Fourth Special Report of 2013-14](#), 23 January 2014

⁵² [Welsh Government Press Release](#), 28 January 2014

⁵³ [Ministers call for exemptions for disabled tenants with adapted homes](#), 9 April 2014

In the event of an exemption not being approved the Ministers called for an increase in DHP funding.⁵⁴

A [debate on the Housing Benefit changes in Wales](#) took place in Westminster Hall on 1 May 2014. The then Minister, Steve Webb, responded to concerns raised about the level of DHP funding:

On the role of discretionary housing payments, several speakers, including the hon. Members for Newport East (Jessica Morden), for Llanelli (Nia Griffith) and for Swansea East (Mrs James), mentioned the pressures in their area on the DHP budget. Let us go through the facts, because people might be thinking, "This is terrible. The Government have been withholding funds for local authorities." Let me make it clear what has happened.

At the start of 2013-14, the figure for DHPs in Wales was £6.9 million; at the start of 2014-15, it was £7.9 million. All of us accept that those are substantial sums of money. We did not leave it at that, however, and one of the themes of the debate is whether we are monitoring and listening and then refining the policy. We listened in two important areas.

We first listened to the position of Welsh and Scottish—mainly—local authorities. We accepted the point also made by my hon. Friends the Members for Ceredigion (Mr Williams) and for Montgomeryshire (Glyn Davies) and others that remote rural areas have particular issues. We therefore allocated additional funding. In Wales, that was £143,000 to Ceredigion, £449,000 to Gwynedd and £387,000 to Powys. Interestingly, my hon. Friend the Member for Montgomeryshire said what a good job Powys had done as a local authority—I pay tribute to it—and one of the reasons it could do so is because the Government had recognised the additional pressures on remote rural areas and come up with the funding. He can therefore report back to the House that it was not largely an issue in his area, because we had monitored what was happening, responded and dealt with it.

We did not leave matters there. We had a national or GB-wide allocation and a remote rural areas allocation, but there might still be acute local circumstances requiring still more funding, so we came up with an additional £20 million pot and invited bids for funding from it. Three Welsh local authorities applied and were given money: Cardiff, Conwy and Caerphilly. No other local authority in Wales asked us for a penny. We cannot simultaneously say that there is unmet need in Newport, Swansea and other areas, and that local authorities are having to turn needy people away, when those authorities did not ask us for the money to top up their DHP budget to such an extent that central Government had unspent additional DHP pot still available for local authorities to claim.

What are those authorities doing? I have no reason to doubt the hon. Members who spoke, but if it is the case that they have constituents for whom the impact of the change has been inappropriate, harsh or unfair—many words have been used—what were their local authorities doing not drawing down the additional money that was available and that was not contingent on matched funding? We did not say to local authorities, "Ask us for more money—but only if you put more in"; we simply said,

⁵⁴ [Welsh Ministers' letter to Lord Freud on disabled tenants living in adapted housing](#), 9 April 2014

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“Do you need more money?”, and only three Welsh local authorities asked for it.⁵⁵

⁵⁵ HC Deb 1 May 2014 cc351-352WH

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