



# East Cambridgeshire District Council

## **NOTES FOR GUIDANCE: APPEALS AND COMPLAINTS COMMITTEE – DISCRETIONARY HOUSING PAYMENTS [As approved: 9<sup>th</sup> January 2003]**

### **1. INTRODUCTION**

1.1 This note provides guidance on Appeal Committee hearings against the Council's determinations relating to Discretionary Housing Payments (DHP).

1.2 Discretionary Housing Payments are not payments of benefit. They are freestanding payments made at the discretion of the Council, subject to an annual cash limit, in cases where the Council considers that additional help with housing costs is needed. There are no prescribed tests of either exceptional hardship or exceptional circumstances - the Council simply has to be satisfied that the person concerned is entitled to Housing Benefit or Council Tax Benefit, or both, and that the person requires further help with housing costs. The Council cannot award any further DHP's once it has exceeded its overall annual cash limit. The level and the duration of a DHP are at the discretion of the Council, although the level of benefit plus the DHP must not exceed the weekly eligible rent or the weekly Council Tax liability. A person claiming a DHP is required by the Regulations to:

- give the Council such information as it may require to make a decision (or look at a decision again)
- tell the Council of any change of circumstances that may be relevant to their continuing to get a DHP
- give the Council such other information as it may require in connection with their claim

and all to be within such time as the Council thinks appropriate.

1.3 An appeal against the Council's determination in respect of DHP is known as a "review". A review may be about almost any aspect of DHP, and may be requested by the claimant or by certain other people affected by the matter in question.

1.4 There are two forms of review:

- firstly, an internal review - this is carried out by an officer of the Council, who will not be the same person who made the original decision, and
- secondly, an appeal to the Council's Appeals and Complaints Committee, made up of elected Members.

## 2. WHO MAY APPEAL?

2.1 The Council will notify any person affected by a determination it has made - and every such person has a right to use the 'internal review' procedures.

2.2 Each of the following is clearly entitled to use the review procedures:

2.2.1 the claimant

2.2.2 a person dealing with a claim on behalf of someone unable to manage his or her own affairs

2.2.3 a landlord in certain circumstances (see below)

In any of these cases, the person concerned may appoint an advisor (whether legally qualified or not) to act on their behalf.

2.3 Landlords

2.3.1 A landlord has the right to use the review procedures (e.g. for decisions on whether DHP should be paid direct to the landlord); whether the landlord has to repay an overpayment; about whether a tenant has a "contrived tenancy" or whether a tenant's rent (or a rent increase) is unreasonably high. A landlord who is refused access to a review on such matters may be able to apply for judicial review in the High Court.

2.3.2 A landlord may not request a review about the personal circumstances of a tenant.

## 3. WHICH MATTERS CAN BE REVIEWED?

3.1 With the exceptions mentioned below, matters relating to a discretionary housing payment under the Child Support, Pensions and Social Security Act 2000 are open to review. For example, a determination that a claimant's circumstances are not exceptional is open to review, as is a determination that an overpayment is recoverable, or a determination to withhold DHP.

3.2 The exceptions are that the following cannot be subject to internal review:

### 3.2.1 Certain elements of the rent

- Ineligible service charges: these are specified in Schedule 1 to the Housing Benefit (General) Regulations 1987 ("the HB regs")
- Charges for water, sewerage, and environmental services - as defined and calculated under the Housing Benefit provisions
- Increases in rent due to outstanding rent arrears: Regulation 8(2A) of the HB regs refers

*[Example 1: Mr X's rent is £75 per week. £10 of this is an ineligible service charge. His Housing Benefit is £65 per week, i.e. his rent is only reduced by the ineligible service charge. In this case, as the only shortfall arises as a consequence of ineligible service charges, no DHP can be made.*

*Example 2: Ms Y's rent is £85 per week and of this, £5 is an ineligible service charge. Her rent for HB purposes is further reduced under Reg 11 so her HB entitlement is £65 per week. In this case you should assume that £70 of her rent is being met by benefit and whether she requires help with the balance.]*

### 3.2.2 **Alternative maximum council tax benefit (CTB) ("second adult rebate")**

- Liability to meet council tax where second adult rebate is payable: this is to ensure that DHP's are not made in cases where a person is not entitled to CTB in their own right, but is getting a second adult rebate. In such cases DHP's cannot meet any shortfall between the second adult rebate and the council tax liability.

*[Example: Mrs Z lives with her son who is on Income Support. She is not entitled to CTB in her own right, but she gets a full second adult rebate (25% of the council tax liability) for her son. She would not be able to get a DHP for help towards the remainder of the council tax]*

### 3.2.3 **Sanctions**

- Any reduction in Income Support or income-based Jobseeker's Allowance (JSA) due to a Reduced Benefit Direction (RBD) for failure to comply with the Child Support Agency in arranging maintenance. The RBD is a reduction in benefit of 40% of the personal allowance and only applies to Income Support or income-based JSA.
- Any reduction in benefit as a result of non-attendance at a work-focussed interview. In other words, a ONE sanction. This applies both where the person's HB/CTB is reduced and where any other benefit that the person is receiving, such as Income Support, is subject to a sanction.
- Any reduction or loss of benefit due to a JSA employment sanction - JSA is not payable for the period of sanction if they have contributed towards their unemployed status, for example by leaving employment voluntarily or failing to attend a prescribed training scheme. In such cases, it may be possible for a reduced rate of JSA to be paid under the JSA hardship provisions.

- Any reduction in benefit due to a JSA sanction for 16/17 year olds – for certain young people who receive JSA under a Severe Hardship Direction – JSA is not payable for the period of the sanction if they have contributed towards their unemployed status, for example, by leaving unemployment voluntarily or failing to attend a prescribed training scheme.

### 3.2.4 **Suspensions**

- Any amount of benefit suspended both in relation to HB/CTB and any other benefit

Benefit can be suspended either because there is a general doubt about entitlement or because a claimant has failed to supply information pertinent to their claim. In such cases, it would not be appropriate to pay DHP's instead. One of the intentions of the suspension provisions is to act as a lever to ensure that the claimant takes the necessary steps to provide the authority with the necessary information/evidence – paying DHP's could reduce the effectiveness of this lever.

### 3.2.5 **Where a person is entitled to HB, but not CTB (and vice-versa)**

- Where the person is entitled to HB, but not CTB, the liability to make council tax payments. In other words, where a person is only getting HB, you should not take into account any financial assistance that he may require with his council tax, when considering the award of a DHP.
- Where the person is entitled to CTB but not HB, the liability to make rent payments. In other words, where a person is only getting CTB, you should not take into account any financial assistance that he may require with this rent, when considering the award of a DHP.

## 4. **REQUEST FOR FURTHER REVIEW BY AN APPEAL COMMITTEE**

4.1 A claimant who is dissatisfied with the outcome of the decision regarding DHP, following an internal review by Council staff, may request a review to be heard by the Council's Appeals and Complaints Committee. The Committee will hear the case if the request:

4.1.1 is in writing

4.1.2 gives the grounds for the appeal, and

4.1.3 is received within four weeks of the date of notification of the result of the decision.

4.2 The four weeks time limit does not include any period before:

4.2.1 the correction of an accidental error

4.2.2 the setting aside of a determination or decision, or

4.2.3 a refusal to do either of these things.

The Committee may extend the time limit for special reasons, even if the four weeks have already run out. It may choose to do this itself, or the claimant may request it in writing. A refusal to extend the time limit is not open to review. This is a discretion held by the Committee itself, not by Council's staff, and will be dealt with by written representations.

4.3 No request for review shall be brought more than one year after the expiration of the last day for appealing under than 4.1.3 above.

4.4 A request for an extension of the time in which a review may be requested shall contain details of any relevant special circumstances upon which the request seeks to rely. The request for the extension of time will not be granted unless the Committee are satisfied that it is in the interests of justice that the request be granted. For the purpose of these guidelines the interests of justice are satisfied if, but not only if, any of the following special circumstances apply:

- (a) the Appellant or a partner or a dependent of the Appellant has died or suffered serious illness
- (b) for part of the relevant period normal postal services were disrupted.

and as a result of (a) or (b) above or some other special circumstances which are wholly exceptional and relevant to the request, it was not practicable for the request to have been made within the required time limit.

4.5 In determining whether it is in the interests of justice to grant a request, the Committee shall have regard to the following principle, that the greater the amount of time that has elapsed between the expiration of the four weeks and the making of the request for an extension of time, the more compelling should be the special circumstances on which the request is based.

4.6 In determining whether it is in the interests of justice whether to grant an extension of time, no account shall be taken of the following:

4.6.1 that the Appellant was unaware of or misunderstood the law applicable to his case, or

4.6.2 that the Committee or the Officer have taken a different view of the law from that previously understood and applied.

- 4.7 The decision of the Committee shall be summarised in writing and as soon as practicable after the decision has been made, a copy of that decision shall be sent or given to the relevant parties.
- 4.8 The Committee hearing should take place within six weeks of the request (or the decision to extend the time period) or as soon as possible thereafter. The claimant and the Council should be given at least seven days' notice of the date, time and place. If such notice is not given, the hearing should not go ahead, unless the claimant and the authority consent.
- 4.9 Where, as a consequence of the Regulations or these guidelines, any notice or other document is required to be given or sent to the Council, that notice or document shall be treated as having been so given or sent on the day that it is received by the Council.
- 4.10 Where, as a consequence of the Regulations or these guidelines, any notice or other document is required to be given or sent to the claimant, appellant or third party, that notice or document shall, if sent by post to that person's last known address, be treated as having been so given or sent on the day it was posted.
- 4.11 For claimants on low incomes, the delays involved in the review procedure are very long, especially if it transpires that the authority is wrongly refusing DHP. It is therefore important for the Committee hearings to be held as soon as possible.

## **5. CONSTITUTION AND STATUS OF THE APPEALS AND COMPLAINTS COMMITTEE**

- 5.1 The Appeals and Complaints Committee is composed of 9 councillors, who appoint one member to act as Chairman or Chairwoman. At least four members of the Committee must be present at each hearing. When the Committee sits, its role is similar to that of an impartial, semi-judicial tribunal.

## **6. THE COMMITTEE HEARING**

- 6.1 The Committee must consider written representations made by the appellant and the authority, and may also request or accept evidence from anyone present. However, it cannot compel anyone to appear.
- 6.2 The appellant and the Council have the right to:
- 6.2.1 be heard
  - 6.2.2 be accompanied (the claimant could bring a friend, for example)
  - 6.2.3 be represented by a solicitor, an adviser or anyone else. In such a circumstance, that representative has the rights of the person he or she is representing

6.2.4 call witnesses and

6.2.5 question each other's witnesses.

6.3 If a third party (e.g. a landlord) requests an appeal hearing, the claimant retains the right to be a full party to the proceedings. The Committee may pay the travelling expenses of the claimant and any third party and of one other person accompanying each. All other questions about procedure are for the Chairman or Chairwoman to determine, subject to the rules of natural justice.

6.4 The Committee is generally expected to be inquisitorial: the members of the Committee have a duty to consider (and if necessary tease out) any point which may be made on the appellant's and the Council's behalf.

## **7. SUGGESTED PROCEDURE FOR THE COMMITTEE**

- The Chairman will introduce herself/himself and the other members of the Committee and the Clerk to the Committee.
- The Chairman will take appearances from the Council's representative and the appellant's representative who will both state their name and position and the names and positions of the witnesses they intend to call.
- Witnesses shall be present only when giving evidence unless both sides agree otherwise. The appellant's representative and the Council's representative will however be present throughout the presentation of the case.
- The Council's representative will summarise the Council's case and identify the issues.
- The Council's representative may call witnesses. Each witness in turn:
  - (i) gives evidence
  - (ii) may be questioned by the appellant's representative (the appellant's representative does not, at this stage, make statements or comments. The opportunity to do so comes later)
  - (iii) may be questioned by members of the committee
  - (iv) may, if necessary, be re-questioned by the Council's representative.
- The appellant's representative summarises his/her case.
- The appellant's representative may call the appellant and any other witnesses. Each witness in turn:

- (i) gives evidence
  - (ii) may be questioned by the Council's representative
  - (iii) may be questioned by members of the Committee
  - (iv) may, if necessary, be re-questioned by the appellant's representative.
- The Council's representative sums up the Council's case.
  - The appellant's representative sums up the appellant's case.
  - Members of the Committee may ask the parties or any witnesses for any additional information or clarification required.
  - The parties, their representatives and witnesses withdraw.
  - The Committee will deliberate in private and then recall the parties, their representatives and witnesses to announce its decision.

## **8. POSTPONEMENT, WITHDRAWAL AND ADJOURNMENT**

- 8.1 The appellant may write requesting withdrawal of the appeal at any time.
- 8.2 Either the appellant or the Council may request postponement. The Chairman has discretion whether to consent or not. It is possible for an appeal to be withdrawn in writing during the course of the hearing, or even after it has finished - so long as the Committee has not yet given its decision. An appellant might choose to request this if it seemed likely that the Committee were about to reduce the award of DHP.
- 8.3 If the appellant fails to appear, the Committee may proceed or not as it considers appropriate. The Committee may adjourn during the hearing at any time, whether or not at the request of one of the parties. If the hearing is part way through adjourning, the reconvened hearing must begin afresh unless the same members are present.

## **9. THE COMMITTEE'S DECISION**

- 9.1 The Committee must decide whether to confirm or revise the Council's determination: it cannot fail to reach a finding. Majority decisions are allowed, and the Chairman has a casting vote, if necessary. In every case, the decision will be confirmed in writing, giving:
- 9.1.1. the finding of fact
  - 9.1.2 the interpretation of the law applying to those facts
  - 9.1.3 the Committee's reasoning, and

9.1.4 the decisions which flow from this.

9.2 In reaching its decision, the Committee is not bound by its decisions, nor by those of other Committees. It is bound by:

9.2.1 the duties, powers and discretion's contained in the regulations in the same way as the Council is

9.2.2 precedents from the courts on DHP law.

## 10. **AFTER THE COMMITTEE HEARING**

10.1 The Committee will send a copy of its decision to the appellant and the Council within seven days or as soon as possible thereafter.

10.2 The Committee's decision is binding on the Council for the case to which it applies. Any change in entitlement is implemented from the original date of the determination or (if appropriate) from the date of revision at an internal review. If the Committee's decision entitles the claimant to more DHP, the balance should be awarded straight away. However, a Committee cannot award an increase in DHP more than 52 weeks before the date the Council determined the original decision. The only exception is where the Council decides to reverse a refusal by the Council to backdate a claim.

## 11. **ACCIDENTAL ERRORS**

11.1 The Committee may also correct any accidental errors which appear in a decision (e.g. slips of the pen, etc). The Committee may be of different composition where it would be inexpedient for the original members to be reconvened. The correction is deemed to become part of the original decision, and the change will be notified as soon as practicable. The discretion to correct an accidental error is not open to review.

## 12. **FURTHER CHANGES**

12.1 It should be noted that entitlement to DHP may change again if:

12.1.1 there is a change of circumstances

12.1.2 the Council reviews the decision

12.1.3 the decision is set aside

12.1.4 the decision is overturned by a court (judicial review).

## 13. **SETTING ASIDE A COMMITTEE DECISION**

13.1 The claimant or any person affected (including the Council) may request an Appeals and Complaints Committee to set aside a decision it has made - even

if the entitlement to HB or CTB has expired. The Committee may do this only if:

13.1.1 a relevant document was not received by the claimant, representative or any person affected. The usual assumptions of the law about what counts as service or delivery of a document do not apply

13.1.2 the claimant, representative or any person affected was absent from an Appeal Committee hearing, or

13.1.3 the interests of justice require it.

13.2 The request will be considered if it is made in writing within 13 weeks of the notification. A copy of the request must be sent to any person affected (including the Council). Any such party must be given a reasonable opportunity to make representations before the Committee considers the matter. The Committee doing this may be of different composition if it would be inexpedient for the original members to be reconvened.

13.3 The 13 week time limit does not include any period before the correction of an accidental error, or the setting aside of some other determination or decision, or a refusal to do either of these things. However, the 13 week time limit will not be extended apart from this. The outcome must be notified as soon as practicable and include a statement of reasons. The discretion to set aside a decision is not open to review.

#### 14.0 **THE COURTS AND THE OMBUDSMAN – WHAT IF A PARTY IS NOT SATISFIED WITH THE REVIEW DECISION**

14.1 A decision of an Appeals and Complaints Committee may be challenged by judicial review in the High Court. Applications for judicial review should be made as quickly as possible, and in any case within three months of the Committee decision, unless there are special reasons for delay.

14.2 Examples of when such a challenge is likely to be successful (and these may overlap) are if the Committee:

14.2.1 wrongly interpreted the law, or

14.2.2 took into account irrelevant considerations, or ignored relevant considerations, or

14.2.3 reached a decision which no reasonable Committee could have reached, or

14.2.4 acted 'ultra vires', or

14.2.5 adopted blanket rules rather than looking at each case independently, or

14.2.6 acted in bad faith or dishonestly, or

14.2.7 did not follow the principles of natural justice, or

14.2.8 did not properly record its decision (e.g. did not include relevant findings of fact, or did not give adequate reasons).

14.3 If your concern is related to any other aspect of the way you have been treated by the Council, you may wish to use the Council's complaints system. **Please remember that this is not the right route to choose if you wish to have a decision of the Council's Appeals and Complaints Committee overturned.** If you do wish to complain to the Council, you can write – either on the forms available in our Reception or otherwise – to the Chief Executive at East Cambridgeshire District Council, The Grange, Nutholt Lane, Ely, Cambs CB7 4PL.

14.4 Another possibility, in the case of injustice as a result of maladministration, is for the case to be investigated by the Local Government Ombudsman – forms are available in our Reception. The Ombudsman cannot set aside a decision of the Appeals and Complaints Committee and in rare cases, the Council may choose not to implement an Ombudsman's findings. However, there have recently been more findings by the Ombudsman in favour of appellants. Generally the Ombudsman will expect you to have used the Council's own complaints system before he will look into a complaint.

14.5 In cases of concern or doubt, advice should be taken from the Citizens Advice Bureau or a solicitor.

## 15. OTHER VERSIONS OF THIS LEAFLET

15.1 If you would like a copy of this guidance to be provided in another format (e.g. large type, Braille or audio tape) or translated into another language, please contact the Council's Legal Department on (01353) 616224.