Localised Welfare
CPAG conference

September 2014
www.cpag.org.uk
1. LOCAL WELFARE PROVISION
### What happened to the Social Fund?

<table>
<thead>
<tr>
<th>OLD SYSTEM</th>
<th>NEW SYSTEM</th>
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</thead>
<tbody>
<tr>
<td>Regulated Social Fund (funeral payments, maternity grants, cold weather and winter fuel)</td>
<td>Still the same</td>
</tr>
<tr>
<td>Budgeting Loans</td>
<td>Still the same (but will be “budgeting advances of Universal Credit when that finally introduced)</td>
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<tr>
<td>Crisis loans for alignment, benefit disallowance, sanction</td>
<td>Short Term Benefit Advances</td>
</tr>
<tr>
<td>Crisis loans for other purposes</td>
<td>Local Authority schemes</td>
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<tr>
<td>Community Care Grants</td>
<td>Local Authority schemes</td>
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</table>
Localism

• “The time has come to disperse power more widely in Britain today.” (Coalition Agreement, 2010)

• ‘It is difficult in a centrally administered system for staff to exercise a high degree of discretion. For example, in the case of Crisis Loans, where it is necessary to determine if there is a severe risk to the applicant’s health or safety. These services can be more effectively run locally where they are linked to other support services.”
How do you find your local scheme?

http://www.cpag.org.uk/lwas

s.1 Freedom of Information Act 2000
Common problems

• In-kind support only / no loans
• Indirect, e.g. food banks, furniture projects.
• Must be receiving means tested benefits
• Won’t support people who are sanctioned
• Local connection / minimum residency
• Excluded if able to access other support/credit.
• Restrictions on repeat awards or claims.
• Restrictions on application methods, e.g online.
• No time frame for decision / no review process.
Grounds for judicial review

- Does the scheme comply with existing duties?
- Has the authority “fettered” its discretion?
- Has the authority applied its own policy? If not are there good reasons for departing from it?
- Is the policy irrational, i.e. so unreasonable no reasonable authority would make that decision?
- Did the local authority comply with the public sector equality duty or hold a consultation?
- Is the procedure for deciding on claims fair?
- Does the scheme discriminate or breach human rights?
Are these policies lawful?

1. The scheme excludes anyone who has not lived in the borough for at least 6 months.
2. You can only apply for support by telephone.
3. There is a fund to help with the cost of moving after an “emergency”. This only includes natural disasters.
4. The Council announces that it is closing the fund from next April.
5. The target for deciding claims is three weeks.
6. The Council will only provide support to people on means tested benefits.
Alternative remedies / solutions

- Internal review
- Local Government Ombudsman.
- Freedom of Information request.
- Complaint to councilor or MP.
- Point to good practice by other local authorities.
- Organise a local campaign.
Funding: an uncertain future...

Government to stop funding for low-income families facing emergencies
Department for Work and Pensions to cut £180m support; Children's Society alarmed at 'blow to critical safety net'

Patrick Butler, Social policy editor
The Guardian, Friday 3 January 2014 10:37 GMT

A £180m-a-year hardship fund providing emergency help for low-income families who suffer sudden financial crisis as a result of domestic violence, ill-health or natural disaster such as flooding is to be scrapped, it has emerged.

Technical documents released just before Christmas suggest the Department for Work and Pensions plans to cut its cash allocation to local authority welfare assistance schemes in 15 months' time.

Charities warned this would lead to a postcode lottery in local welfare help and trigger a rise in the number of people becoming dependent on loan sharks or charitable support.
2. COUNCIL TAX REDUCTION SCHEMES
Local Government and Finance Act 2012

- Abolished council tax benefit.
- Each local authority must set its own council tax reduction scheme.
- To be paid for out of a central government pot.
- 10% cut in overall funding compared to CTB.
- But pensioners protected.
  - c.30% cut for working-age taxpayers.
- NB councils cannot borrow to make up the difference.
The new powers and duties

- S13A LGFA 1992
- Each billing authority must make a scheme
- The scheme must specify the reductions for:
  - persons in financial need
  - classes of persons in financial need.
- If you’re within the scheme, your liability “is” reduced accordingly (i.e. no individual discretion).
- But discretionary reductions still available in any case where the authority “thinks fit” (s13A(2)(c)).
A scheme must include...

Schedule 1A LGFA 1992
Each scheme must state...
... the classes of person entitled.
... the reductions to which persons in each class are entitled.
... the procedure by which people can:
  - apply for a CTR; and
  - appeal against a refusal.

CTRS (Prescribed Requirements) (England) Regulations 2012
Prescribes requirements for
  - pensioners
  - persons subject to immigration control and habitual residence
  - meaning of “couple”, “household”, “non-dependants”
  - applicable amounts
  - earnings and capital disregards
  - procedural matters
  - an application may be in writing, by email, or by phone.

CTRS (Default Scheme) (England) Regulations 2012
Procedure for introducing a scheme

- Duty to publish draft scheme and consult “such other persons as it considers are likely to have an interest in the operation of the scheme.” (Sch1A, 3(1)).
- Duty to approve scheme before 31 January each year.
- Must consult on any review.
- Scheme must come into force by 1 April.
- Otherwise, default scheme applies.
How have councils responded?

- Minimum payments for all residents (71% of local authorities in 2013/14)
- Excluding low paid who are in work
- Protecting only the most vulnerable, e.g. families with dependents, the disabled
- Changing capital rules
- Minimum residency rules (e.g. Sandwell and Tendring)
“Westminster city council, for example, is looking into the idea of social contracts, such as linking council tax benefit with obeying the law, actively seeking employment and undertaking voluntary work.”

(Eric Pickles, House of Commons 2nd reading debate)
Challenging a refusal

Arguing that the individual decision is not in accordance with the Council’s scheme…

… appeal to the **Valuation Tribunal**.

Arguing that the scheme itself is unlawful…

…. **Judicial Review**.

Challenging a refusal of a discretionary reduction…

… appeal to the **Valuation Tribunal**.
Other remedies

• Magistrates Court:
  − If appeal or JR is pending request a stay on enforcement.

• Complaint to the Ombudsman:
  − Can award compensation for maladministration.
  − But no power to award reduction or to rule on lawfulness of the scheme.

• Local democratic routes:
  − e.g. consultation, writing to councillors, campaign.
  − NB: after 31 January council has no power to change its scheme for that year.
Challenging by judicial review

• Consider:

1. Was the scheme implemented lawfully?
   - Public Sector Equality Duty;
   - Statutory duty to consult.

2. Is the content of the scheme lawful?
   - Ultra vires (i.e. within the authority’s powers)
   - Statutory purpose “is to relieve those in financial need of the full burden of council tax” - *R(Winder ) v Sandwell*.

3. Does the scheme discriminate unlawfully?
   - Equality Act 2010, Article 14 EHRC, EU law.
   - If discrimination is indirect, is it justified and proportionate?
   - e.g. race, victims of domestic violence.
Recent test cases

- **R (Stirling) v Haringey LBC [2013] EWCA Civ 116**
  - Consultation process for introducing scheme was lawful.
  - Appeal heard by Supreme Court on 9 June 2014.

- **R(Winder and Ors) v Sandwell MBC [2014] EWHC 2617 (Admin)**
  - 2 year minimum local residency rule was unlawful.
  - Council failed to consult or comply with equality duties.
3. DISCRETIONARY HOUSING PAYMENTS
Guest speaker

Rebekah Carrier, solicitor at Hopkin Murray Beskine.

Discretionary Housing Payments
Background: Housing benefit reform puts DHP centre stage

The coalition government’s radical welfare reform policy was announced in the June 2010 budget. **Housing benefit reforms:**

**From April 2011**
- LHA restriction to 4 bed rate
- New upper limits to LHA
- Increases in non dependant deductions

**From October 2011**
- LHA reduced from median to 30th centile
- From April 2013
- Bedroom tax (Social Sector Size Criteria)
- LHA uprating linked to Consumer Prices Index
- Restrictions on HB for JSA claimants after one year (not implemented)

**From April 2013**
Phased introduction of benefit cap
The role of DHP in supporting reform and increases in the fund

- 2013 autumn statement: government announces an additional £40 million for DHP in 2014/15
- Total government contribution £165 million
- Fund targeted at bedroom tax maintained in 2015/16 ‘to give LAs the confidence to make long term awards where they are appropriate’
Distribution of government contribution

- Baseline (before reforms) £20 million
- LHA reforms £40 million
- Bedroom tax £60 million
- Benefit cap £45 million
Approaches to individual DHP applications

• Key materials:
  • DHP Guidance Manual April 2014
  • Local authority’s own DHP policy
  • Comprehensive information about applicants circumstances
DHP guidance and good practice manual

• LAs may have different procedural requirements but should act consistently ( guidance @ 3.2)
• LA may accept application from advocate or appointee (3.4)
• DHPs can be paid to third party (3.6)
• LA may decide to disregard income from disability related benefits (3.9) ( but if decide to include it should explain why)
• LA must tell the applicant of the decision (3.14)
• LAs can backdate DHP (3.19)
• It may be helpful to allow applications in advance (4.4)
• There is no limit to the length of time over which a DHP may be made (5)
• Overpayments cannot be collected from benefits (5.13)
DHP guidance on dispute procedures

- LA can review a DHP decision
- There is no right of appeal to a tribunal (so judicial review or LGO may be appropriate)
- Flexibility about procedure on review and practice varies from authority to authority but guidance recommends a senior colleague carries out review (guidance @ 6.5)
- Review decision should be notified in writing (6.6)
- See also Good Practice Guide
Local policies: an example (LB Hackney)

- **Discretionary Housing Payment**
  
  A Discretionary Housing Payment comes from a fund which is limited by Central Government. We have to consider each case individually and on its own merit. A DHP is not automatically awarded because your housing benefit does not cover your rent. It is important that all relevant information and evidence is included with your application.
LB Hackney policy

- These payments will:
  - only be made if you are already in receipt of housing or council tax benefit
  - be paid together with the payments of housing or council tax benefit
  - be paid for a limited period of time
  - be paid from a specific fund which is limited by Central Government.
When applying, you will need to explain why the payment is needed. Some examples include:
financial problems
personal problems
a medical condition
the risk of being made homeless
These payments can be withdrawn at any time and you can appeal against our decision. If you appeal you will need to provide supporting information and evidence. You will be told of our decision which is final, after which there is no further right of appeal.
Payments are only made for a limited period of time. After the period ends you can apply again. You will need to show that you have made every effort to resolve the shortfall in rent or council tax.
Ensuring applications include as much information as possible

• Most applications include an income and expenditure form. Many have specific questions and so don’t prompt the applicant to include certain types of expenditure, for example school books, uniform, shoes.

• Make sure applicants think about all the additional expenses

• Application forms may or may not prompt applicants to explain why they cannot find another solution to the shortfall between rent and housing benefit: make sure specific relevant circumstances are mentioned
We are pleased to inform you that you have been awarded a DHP

- BUT......
- Many LHA awards set conditions;
- Many LHA awards are for very short periods and may notify the applicant of conditions likely to attach to any renewed application;
- What about partial awards?
Judicial review (again)

- DHPs have been much talked about in the courts in the last two years, mainly in the context of their role in mitigating what might otherwise be the unlawful impact of the benefit cap and the bedroom tax.
- Many discussions suggest that individual decisions about whether or not to award a DHP (and presumably how much and for how long) may be “appealed.”
- Many schemes provide an internal right of review. In theory any decision by a public body may be susceptible to judicial review.
- There are likely to be many practical and legal barriers to running successful challenges to individual decisions or local authority schemes.
- But what about broader policy decisions for example about how to allocate funds or whether to provide funding to top up central government funding?
4. CPAG’S LOCAL WELFARE ASSISTANCE AND SHORT TERM BENEFIT ADVANCES WEBPAGE
Introduction

- Community Care Grants and Crisis Loans (for living expenses) abolished April 2013
- Replaced by 162 local welfare assistance schemes and short term benefits advances
- Funding for LWAS through DWP (England) and Treasury (Wales and Scotland)
- Funding not ring fenced
Underspend and complexity

- CCGs and CLs replaced by 162 unique schemes
- Stringent eligibility criteria
- Anticipated demand for LWAS did not materialise
- STBA awards and expenditure sharply down
- LWAS: significant underspend
- Funding **not** ring fenced
- Vital support to vulnerable people
Funding withdrawn

- DWP funding ends 2015
- Council free to fund their schemes
- No extra money from DCLG
- Wales consulting, Scotland committed to future scheme, English councils unclear…
- STBA to continue
Local Assistance Schemes and Short Term Benefit Advances

- [www.cpag.org.uk/lwas](http://www.cpag.org.uk/lwas)
- [www.cpag.org.stba](http://www.cpag.org.stba)
- Postcode look up tool
- Details of 162 schemes
- Internal council staff guidance
- Comprehensive STBA guide
- News about the future of LWAS
CPAG Training

CPAG’s experience in the welfare rights field is unrivalled and this is reflected in the quality of our training. Our courses cover all aspects of welfare benefits, tax credits and the welfare rights system. We run a variety of courses throughout the year at venues across the UK, including London, Manchester, Birmingham, Newcastle, Liverpool and Cardiff.

Please keep an eye on our website as new training dates and locations are added throughout the year.

www.cpag.org.uk/training

Also, all of CPAGs courses can be delivered ‘in-house’ on a date and at a venue to suit you.

Providing a course in-house can be more cost effective - saving on time, travel and accommodation costs. We provide the expert tutor(s) and all training materials.
CPAG Publications

CPAG publish books to help both people at risk of poverty and their advisers. Our most popular titles include the *Welfare Benefits and Tax Credits Handbook*, *Debt Advice Handbook* and *Child Support Handbook*. We also publish social security and child support legislation with an expert commentary. We sell a selection of books published by other organisations too, which we feel are particularly useful to our members and customers.

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Please feel free to email us with any enquiries: bookorders@cpag.org.uk
CPAG Advice Line

CPAG advice line for advisers

Tel: 0207 837 4627

Mondays to Thursdays 2pm - 4pm
Fridays 10am – 12pm