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# Forms of fettering: Application forms and the exercise of discretion in the welfare state

Jed Meers*

## Abstract

Application forms are often the compulsory interface between citizens and their social rights. Applicants for support must navigate the questions, checklists and blank spaces in often long, detailed documents to assert their social entitlements. Given their ubiquity and the central role they play in the administration of the welfare state, it is perhaps surprising that they have been neglected in favour of a focus on other documentation, principally policy and guidance. This paper argues that the non-fettering ground of review – a principle whose jurisprudence is tied to the design and use of policy – also engages application forms. Through an analysis of 271 application forms used to administer the localised Discretionary Housing Payment scheme in England, three examples of their fettering potential are provided: the imposition of exhaustive criteria; requiring the applicant to self-classify or disclose irrelevant considerations; and constraining responses through tied evidential requirements. By arguing that the non-fettering ground should not limit itself to one kind of document (policy) when administrators are so reliant on another (application forms), the paper's broader agenda is to argue that principles of good administration should apply to all documentation used to administer social entitlement.

**KEYWORDS:** Discretion, fettering, documentation, discretionary housing payments.

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## Introduction

Application forms are central to the administration of the welfare state. For the vast majority of working-age benefits in the UK and across Europe, they are the compulsory interface between claimants and social security support. The content of these forms is therefore vital: the questions asked, evidence required, or the formatting of checklists and tables can all act to constrain or shape an applicant's response and colour an administrative worker's exercise of discretion. Far from banal paperwork or 'mundane artefacts' (Harper, 1998, p. 13) – engendering the 'routine responses' (Brenneis, 2006, p. 42) or 'sheer indifference' (Jacob, 2007, p. 258) so often analysed in studies of forms and form-filling – these are high-stakes documents. An error in a form's completion, such as omitting required evidence or neglecting to answer questions, can lead to destitution.

Despite the importance of these forms in the administration of the welfare state and a material turn in much socio-legal scholarship (Riles, 2006; Pottage, 2012), there has been no sustained analysis of application forms. Administrative lawyers and the courts have trained their attention on other documentation – principally policies and guidance – or have subsumed their analyses into broader assessments of the routines and coping mechanisms of street-level bureaucrats (Adler, 2010). Through a 'form-led analysis' (Singh, 2017, p. 536) of 271 'discretionary housing payment' (DHP) application forms in England, this paper argues that the non-fettering principle used to interrogate the formation and application of policies, also engages the design and use of application forms.

The argument falls into four sections. The first outlines how the principles that have evolved to assess the fettering of discretion through one form of document – policy – apply to another – application forms. The second considers the statutory basis of different application forms in the administration of social entitlement. The third provides context on the DHP scheme and argues for the central role of application forms within it. The fourth draws on an analysis of 271 DHP application forms to provide three examples of their fettering potential: imposing exhaustive criteria, self-classification or the assessment of irrelevant considerations, and the imposition of evidential requirements.

There is also a broader agenda here. If, as Stark argues, grounds of review serve to send a 'message' to administrators (Stark, 2019, p. 16), it would be perverse for the non-fettering

ground to limit itself to one form of document (policy) when welfare bureaucracy and its administrators are also so reliant on another (application forms). By demonstrating how application forms can engage the same non-fettering principles as policy, the message sent is that the careful wording or 'judge-proof[ing]' of policies are not enough (Knight, 2009, p. 80) – principles of good administration should apply to all documentation used to administer social entitlement.

**Non-fettering principles and application forms**

After a spell in the wilderness, the non-fettering principle has had somewhat of an academic resurgence. Perry has advocated recently for its continued utility in administrative law (Perry, 2017), McHarg is less convinced (2017). Stark builds on both to offer what she describes as a 'third option' (Stark, 2019, p. 2), demonstrating how the non-fettering ground can stand-alone coherently, alongside legitimate expectations and the emerging principle of 'consistency' in the application of policy. What all analyses have in common is a recognition that the courts have built the fettering ground of review on one type of document: policy. Indeed, the seemingly restricted ambit of the ground has leveraged semantic arguments about what a 'policy' actually is, such as Goudie QC's (unsuccessful) assertion that as 'the jurisprudence about fettering discretion relates to the creation and operation of a "policy"', the principle is incapable of applying to a 'one-off' decision (R (*Luton Borough Council v The Secretary of State for Education* [2011] EWHC 217 (Admin) [54]).

The principles at play get their teeth from the capacity of policies – detailing overarching rules, benchmarks, considerations, and so on – to constrain the ambit of a discretsionary decision. The basic position of the law can be put briefly: where a decision-maker has been conferred a discretionary power by statute, they must not disable themselves from exercising it through rigid adherence to policy. This constraint is 'crucial', as without it public decision-makers could fail to have regard to what affected persons 'have to say' and/or relevant factors (*R (West Berkshire District Council and another) v Secretary of State for Communities and Local Government* [2016] EWCA Civ 441 [19]). As argued by McHarg, the focus of the courts is not on whether the adoption of a policy is lawful *per se,* but rather on its capacity to *structure* the discretion of the decision-maker (McHarg, 2017, p. 273). A policy should 'not be so rigid' that it amounts to a decision in advance (*R. (on the application of Lumba) v Secretary of State for the Home Department* [2011] UKSC 12 [21]), but should instead admit of some flexibility and

‘ad-hoc’ exceptions. Put another way, policies should operate as ‘rules of thumb’ (Perry, 2017, p. 381).

At the core of this approach is a concern with the capacity of a non-human actor (here, a document outlining policy) to constrain the discretion of a human decision-maker. This concern animates all non-fettering principles regardless of jurisdiction. Kunnecke notes the ‘striking’ similarity between the English and German courts’ approaches (Künnecke, 2007, p. 91) and Pottie and Sossin’s observations of the court’s concern with ‘the language of…policy statement[s]’ applies as much to the UK as it does to their Canadian examples (Pottie and Sossin, 2005, p. 155).

There is little doubt these policy documents occupy a high profile in the decisions of those administering social entitlement. Indeed, evidence suggests they are far more important to decision makers than any underpinning legislation conferring the discretionary power. There is little appreciation of the hierarchy of public law instruments in welfare bureaucracies: front-line decision-makers ‘seldom’ utilise legislation, relying heavily on policies and guidance (Pottie and Sossin, 2005, p. 152), perhaps best illustrated by O’Brien’s memorable case study featuring a decision-maker proclaiming, ‘we don’t look at the law, just the guidance’ (2017, p. 207).

In the administration of social entitlement, however, policies and guidance only provide a partial picture of the non-human actors that impact decision-making. Documents are ‘potent’ in the field of social welfare (Carr, 2016, p. 215). There is a rich literature analysing face-to-face interactions with street level bureaucrats (Hoag, 2011, p. 84) and administrative law scholars are increasing alive to the challenges posed by algorithms or other technological decision-making tools (Oswald, 2018). An applicant for social assistance, however, is far more likely to engage only with ‘paperwork hurdles’ (O’Brien, 2017, p. 234) – principally the humble application form, with its questions, tables, and checklists, structuring both the information provided to the decision-maker and their subsequent decision. These documents, although subject to far less analysis than those detailing policy, are the compulsory interface between the citizen and their access to social security, operationalising the overarching policy that is so often subject to the fettering concern. In other words, these documents are policy made manifest. To perhaps overstretch Lord Reid’s metaphor in *British Oxygen Co. Ltd. v Minister of Technology* [1971] AC 610, if a decision-maker should not ‘shut his ears’ to an application (p. 624), it is these forms which are doing the listening.

Many of the virtues that the courts ascribe to policy and guidance apply to the use of application forms. They help to ensure both 'coherent and consistent' decision-making (*R. v Secretary of State for the Environment, Transport and the Regions Ex p. Holdings & Barnes Plc (the Alconbury case)* [2001] UKHL 23 [2002] Env. L.R. 12 [143]), and feed into 'utilitarian considerations' of 'efficient administration' which are so acute in the context of 'social welfare' (*Runa Begum v Tower Hamlets London Borough Council* [2003] UKHL 5 [2003] 2 A.C. 430 [43]). In much the same way that adopting policies to guide the exercise of a discretion is 'perfectly proper' (*Alconbury,* [143]), so too is the use of other forms of documentation – here, application forms – to structure decision-making.

I argue, however, the 'underpinning' principles that animate the fettering ground of review (Stark, 2019, p. 13) also apply. If the case law on fettering a discretion is, at its root, concerned with the impact of non-human actors on decision-making, whether a discretion is fettered by virtue of a 'policy', or whether by an application form required of applicants, the same principles apply. Both documents attain their capacity to fetter through their ability to prevent the consideration of ad-hoc exceptions. Although the mechanism may be different (more on that below), the output is the same: an application form can fetter a discretion as much as a policy can. Application forms can engage these underlying principles in two key instances: (i) fettering a discretion in fact, and (ii) determining (ir)relevant considerations.

### *I. Fettering a discretion in fact*

Policies and application forms often exist in symbiosis. Those broad statements and principles contained in policies and guidance are often phrased delicately to ensure they are 'judge-proofed' or 'bullet-proofed' against challenges (Knight, 2009, p. 80; Halliday, 2004, p. 63-64). For instance, it is not unusual for DHP policies to refer explicitly to the need to avoid fettering discretion (York City Council, 2018, p. 4). These overarching statements become material when designing a form which captures the information required to process an application. As Stark argues, under the non-fettering ground, the court will look 'behind the form of a policy to its operation in substance' (Stark, 2019, p. 28). Knight's distinction between fettering in law and fact is helpful here (Knight, 2009, p. 78). An authority may, for instance, have a restrictive policy that is applied flexibly or vice-versa. The courts have looked at descriptive statistics or other documentary evidence (such as decision letters) to evidence where a *prima facie* lawful policy admitting of exceptions has been applied unlawfully in a 'hard edged way' (see *R (on the application of Luton Borough Council) v The Secretary of State for Education* [2011]

EWHC 217 (Admin) [61]). Even in the face of a seemingly strict policy, the court must be satisfied that there is a procedure and 'genuine willingness to consider individual cases', not simply a 'rigid adherence to their policy' at all costs (*R v London Borough of Bexley* [1995] E.L.R. 42 [55]). Application forms can serve to identify these distinctions, demonstrating where a policy which may not *prima facie* fetter unlawfully, may be fettering in fact.

The paper turns to some examples of this shortly, but to provide a general demonstration of the point, consider that a local authority adopts a policy to award hardship payments to claimants who fall into certain pre-determined classes of 'exceptional circumstances'. It is well established that a policy-maker can express such a policy in unqualified terms, provided procedures exist to admit of exceptions to *prima facie* bright-line rules (*West Berkshire* [17]; and *Ex p. Jones* [1995] E.L.R. 42). To apply for access to the fund, all claimants must complete an application form. This form provides a finite list of five circumstances – passported from the policy – in a checklist format. The applicant is required to tick which applies. Here, in practice, they have no 'exceptions procedure worth the name' (*R v London Borough of Bexley* [1995] E.L.R. 42 [55]), the form instead details a constrained, pre-determined exhaustive list. The application form demonstrates that the policy is being applied rigidly, does not in fact admit of exceptions, and is in turn fettering the exercise of discretion by the administrative worker.

### *II. Determining (ir)relevant considerations*

Second, at their core, application forms are a means of capturing and shaping information for an administrative worker tasked with a decision. The questions, checklists, tables and so on, all control the range of factors available for the decision-maker to take into account at the point of their determination. Although policies are often heralded as a means of making it 'harder…to take irrelevant considerations into account' (Stark, 2019, p. 18), the courts have looked at the extent to which the discounting of factors can constrain decision-making. Policies which 'prevent the [decision-maker] taking into account a relevant consideration' can unlawfully fetter a discretion (See *R (on the application of Adath Yisroel Burial Society) v HM Senior Coroner for Inner North London* [2018] EWHC 969 (Admin) [87]).

The same principle applies to the design of application forms. An application process prevents the consideration of important relevant factors is one which is capable of fettering a subsequent discretionary decision. This also works the other way around. This is not just about factors that are neglected within documentation, but also about the considerations implied through

questions on these forms. To ask a question as part of an application implies its relevance for subsequent decision-making. Otherwise, why ask it? This too can serve to illustrate *irrelevant considerations* being accounted for in the exercise of a discretionary power. This approach has emerged in challenges to the administration of the DHP scheme. In *R (on the Application of Halvai) v London Borough of Hammersmith and Fulham* [2017] EWHC 802 (Admin), the applicant had answered questions on a DHP application form about the difficulty of sourcing alternative accommodation as a result of her disabilities and the significant extent of adaptations made to her property ([34]-[35]). However, the Court considered that there was 'no evidence these matters' had been considered ([37]), and that consequently Hammersmith and Fulham had 'also erred in failing to take account of all the relevant factors and, specifically, these identified features of its own policy' ([44]), reflected in the application form itself.

**Not all forms are created equal: Assessing statutory purpose**

The example used in this paper – application forms administering the localised DHP scheme – is admittedly a narrow one. Before launching into the details of the scheme, therefore, it is important to consider how the analysis may apply to other uses of application forms in the administration of social entitlement. As argued by Stark, when assessing the application of the non-fettering ground, 'as ever, our starting point has to be the statutory purpose' (Stark, 2019, p. 24). There is an important distinction drawn in law between fettering a discretion conferred by statute and one derived through a prerogative power (*R (on the application of Sandiford) v The Secretary of State for Foreign and Commonwealth Affairs* [2014] UKSC 44 [61]-[62] (per Carnwath L and Mance L); Knight, 2009, p. 74-75). Although the use of application forms abound in the discharge of both, our focus here is on the former. The provision of DHPs and social security more broadly, and all the documentation that comes with it, is a statutory creature. If the principle against fettering discretion is concerned with the obligation to exercise discretion imposed by an 'external originator' (*R (on the ssapplication of Sandiford) v The Secretary of State for Foreign and Commonwealth Affairs* [2013] EWCA Civ 581 [61]), then it is important to consider how the use and design of application forms vary in relation to the underpinning discretion conferred by statute. I argue the statutory context in which application forms are used varies in relation to two circumstances: the source of their design (centralised/decentralised) and the extent to which they simply transpose requirements laid out in legislation (prescribed/non-prescribed).

Most of the UK welfare state is administered using centralised and prescribed forms, designed by civil servants in government departments. This approach characterises two successor benefits introduced by the UK Government: Universal Credit and Personal Independence Payments (PIP). The drive for standardisation in the former has led to the 'digital by default' design (Dwyer and Wright, 2014, p. 32-33) – underpinned by legislation[i] – where applicants must use a standardised online application form designed by the Department for Work and Pensions (DWP), derided by Seddon and O'Donovan as a 'factory-style operation' (2013, p. 10). For PIP, all claims are also managed by the DWP with centrally designed forms ('PIP1' to screen applicants and the 'PIP2 questionnaire' to determine eligibility) issued and processed centrally. Of course, the central design of these forms does not make their interrogation any less important. The Government commissioned independent review underscored that the PIP2 form is a 'vital piece of evidence the importance of which should not be overlooked' (Gray, 2017, p. 6), with the Universal Credit application process having been subject to sustained criticism (Royston, 2017, p. 215-222; Dwyer and Wright, 2014, p. 32-33).

Less common are prescribed, decentralised forms, where a tightly delineated statutory scheme is laid down by Government, but discretion in the design of the application process is conferred to decentralised agencies. For instance, the exhaustive requirements for English housing benefit applications are laid out under the Housing Benefit Regulations 2006, but individual housing authorities design their own documentation to aid processing. Reg.83(1) only requires that claims are made by applicants on a 'properly completed form', which is only such if 'it is completed in accordance with the instructions on the form, including any instructions to provide information and evidence in connection with the claim' (Reg. 83(9) Housing Benefit Regulations 2006). The format and content of application forms is at the discretion of individual authorities leading to significanst variation in their composition (Seddon and O'Donovan, 2013, p. 11-16).

Finally, application forms may be both decentralised and used to administer a non-prescribed entitlement, such as those designed in response to a broad discretionary power. The Council Tax Reduction Scheme, Local Welfare Assistance Schemes and – the focus of this paper – DHPs, are the most notable examples. For instance, the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012/2885 provide a broad discretion for local authorities to 'reduce' council tax (by awarding what would have otherwise been the predecessor council tax benefit); although requirements for pensioners are more tightly prescribed, the administration of the scheme for those of working age is a broad discretion

accompanied by Government guidance. The only substantive requirement made of application processes is that any associated forms are supplied 'free of charge' (s.3(2) Sch. 7 Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012/2885).

The DHP application form examples that follow are sited in this final de-centralised/non-prescribed context. The analysis deals, therefore, with a broad-ranging conferral of discretion via statute to local authorities. The statutory scheme at play – outlined below – is less complex than in de-centralised/prescribed settings (such as housing benefit) where authorities are operating under far more constrained discretionary powers and where forms often transpose tightly delineated statutory criteria. Yet the DHP approach admits of far greater variation than prescribed/centralised contexts (such as Universal Credit), where only one centrally designed application form is used, not the variation we see below. It is important to caveat what follows, therefore, by underscoring that the fettering principle is a creature of the underpinning statutory schema, and may play out differently in centralised/prescribed and decentralised/prescribed contexts.

**Discretionary housing payments: A *precis***

Having provided a broader assessment of the statutory context in which the design of these application forms sit, before turning to the examples it is important to provide some further detail on the DHP regime. Only key contextual issues are dealt with here, for a more comprehensive assessment readers are better served elsewhere (CCHPR, 2015; Meers, 2015). The scheme functions by the DWP allocating an annual budget – calculated with reference to a centralised formula – to Local Authorities across the United Kingdom[ii] to provide 'top-up' payments to those in receipt of housing benefit who require additional assistance to meet their housing costs. The underpinning Discretionary Financial Assistance Regulations 2001/1167 provide a broad discretion to local authorities in making awards, with three key limitations: (i) payments can only be made to those receiving Housing Benefit or the 'relevant award of universal credit' (ostensibly the 'housing element', Reg. 2(1)(a)), (ii) the local authority must be satisfied that the claimant requires 'some further financial assistance in addition to the benefit to which they are entitled to meet their housing costs' (Reg. 2(1)(b)), and (iii) payments cannot cover certain exempted areas, such as benefit sanctions, increases in rent due to arrears or service charges (Reg. 3).

The scheme has endured a dramatic evolution since its formation in 2001. From a small-scale discretionary fund, accounting for approximately £20 million per annum of expenditure across the UK in 2001/2002 (Leicester and Shaw, 2003, p. 5), the same regulations will now shoulder over £1 billion of expenditure over the course of this Parliament (HC Deb 22 June 2017, vol.626, col.230). This is as a result of the payments' central role in mitigating reductions to housing benefit following the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016; principally the so-called 'bedroom tax' policy, the benefit cap, and freezes to Local Housing Allowance (LHA), the form of housing benefit claimed in the private rented sector.

Their availability to claimants affected by this suite of policies is more than mere gratuity. The payments are of considerable legal purchase in justifying the lawfulness of flagship welfare reforms. Reductions to housing benefit in the wake of the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016 have been characterised by a relative lack of statutossry exemptions, instead relying on the inflated DHP scheme to provide support in the 'kind of hard cases' which are 'so hard to define in statute' and to 'get the funds to the right people' (HL Deb, 25 January 2016, c1131). This has resulted in some tightly drawn categories of claimants being exempted from policies in underpinning regulations, but the bulk left to rely on the discretionary scheme. For instance, the underpinning 'bedroom tax' regulations permit an additional room for those who require overnight care or cannot share a bedroom, but not others with a disability (Reg.B13 Housing Benefit Regulations 2006), and the benefit cap does not apply to those in receipt of guardian's or carer's allowance, but does to lone parents in receipt of child benefits (Reg.75F Housing Benefit Regulations 2006).

Successive judicial review challenges, almost all rooted in arguing an unlawful breach of Article 14 ECHR taken with Article 1 of Protocol 1, have underscored that approach is structurally sound. The courts have found that it is reasonable for most classes of claimant – such as the broader group of tenants with disabilities affected by the 'bedroom tax' in *R. (on the application of Carmichael) v Secretary of State for Work and Pensions* [2016] UKSC 58 – to 'be considered on an individual basis under the DHP scheme' ([53]), as opposed to having a right to a sum certain.

Notwithstanding that these payments are the lynchpin of reductions to housing benefit, the administration of DHPs is notoriously ambiguous, being described frequently as a 'postcode lottery' (Work and Pensions Committee, 2016, p. 1, 16). The Government's DHP guidance, though stretching to 56 pages, offers little in the way of substance, with general procedural

requirements to 'on a case by case basis hav[e] regard to the purpose of those disability related benefits' (Department for Work and Pensions, 2016, p. 14), or that 'regard should be given to the Supreme Court's judgment in *Rutherford*' (Ibid, p. 33) sitting alongside generalities, such as 'LAs may interpret [further financial assistance] however they wish, taking into consideration the claimant's financial circumstances and any other relevant factors' (Ibid, p. 6).

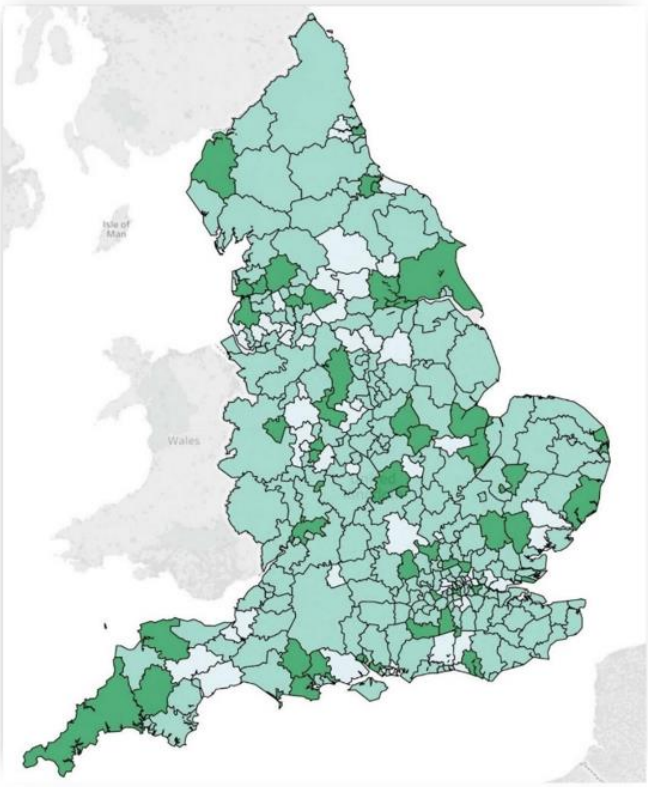
In practice, local authorities exercise their discretion through issuing application forms to claimants, with face-to-face assessments with administrative staff being very rare (CCHPR, 2015, p. 37-46). These are not 'blueprints for…conversations' as is common in other studies of documentation (Singh, 2017, p. 515), nor are they standardised forms issued by the Government or an arms-length agency. As a result, there is significant variation across the forms sampled in this study. Conclusions others have drawn about the standardising effect of documentation or the role of forms as 'instruments of devolution' (Singh, 2017, p. 512) are based on an assessment of uniform documentation – here, hundreds of parallel forms co-exist for the same purpose.

**Analysing the forms**

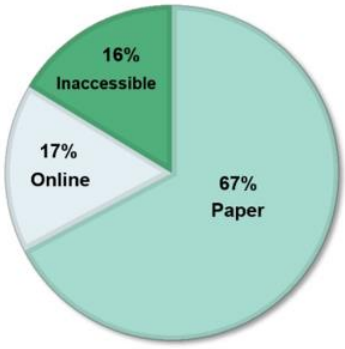
There are 271 DHP application forms from English local authorities in the sample. These were collected by searching on each of the 324 English local authorities' websites. Authorities fell into three categories: those with 'paper' forms, available to download and print; those with 'online' forms, where the filler has to respond to questions in their browser, often only revealing later questions as earlier stages are answered; and those with 'inaccessible' forms, where the claimant has to login to a validated account with the authority or contact them via email/present at the office to attain documentation. The sample is comprised of the 'paper' and accessible 'online' forms.

Figure 1 details the breakdown between these three categories and maps the local authorities involved in the study. The figure illustrates that there is a sizable geographical spread in the sample and that the majority (67%) use 'paper' forms.

Figure 1. DHP application form sample by local authority area and status.



An interactive version of this map – with access to links to the forms used in analysis – is available at: dhpforms.socialrights.co.uk




| Form Status | Number |
|---|---|
| Paper | 218 |
| Online | 53 |
| Inaccessible | 53 |
| ***Sample total*** | **271** |

As the form samples were all publicly available documents, the research did not present any ethical dilemmas. Where online forms required the entry of data to proceed, input boxes were filled with placeholder text. If a valid address was required to proceed, the local authority office building was used, and if a valid national insurance number was required a placeholder ('AB123456C') was entered. No online forms were submitted, though some local authorities may be able to access partial completions.

These sample forms were analysed in two stages. First, the following key characteristics were tracked across the sample: whether the application form (i) stated DHPs are paid for a fixed period/if these fixed periods are specified in a entry box; (ii) asks if family/friends can support/accommodate; (iii) requires applicants to place themselves in pre-determined categories; (iv) asks about belongings that could be sold; (v) or asks questions which imply the imposition of conditionality (e.g. what have you done to help yourself?). All of these factors are of particular theoretical interest following prior work by the Child Poverty Action Group in *Carmichael*[iii] and previous work undertaken by the author on a slightly smaller, and older,

sample of forms (Meers, 2018). The numbers of itemised headings in income/expenditure tables were also counted to provide an idea of the extent of the means assessment applicants were subjected to (i.e the level of detail demanded of their finances). Second, the forms were re-read to identify: (i) variants of these tracked characteristics (e.g. the way in which time periods for support were limited by the form), and (ii) other common patterns in the questions and formatting of the documents/online applications.

To provide some context for the analysis that follows, Figure Two details some descriptors from the first stage of this analysis. How many of the tracked criteria the forms meet is detailed as the 'count' (i.e. the number of forms that meet no criteria, one criterion, two criteria, and so on). The remainder of the table indicates the amount of their DHP budget the relevant local authority spent in 2017/18. This is expressed both as a frequency and as a percentage of the total number of authorities exhibiting the same number of the tracked criteria (i.e. the percentage of authorities in the same row).

Figure 2. Presence of tracked criteria in the forms and Local Authority DHP spend.

**CRITERIA TRACKED**

- ✓ Form asks if family/friends could contribute financially or accommodate
- ✓ Form states unconditionally that DHP will only be short term measure
- ✓ Award is for a defined period
- ✓ Self-categorisation required
- ✓ Question about selling belongings/assets
- ✓ Imposition of conduct conditionality

| | | **Total Percentage expenditure of DHP Budget 2017/18** (Count (% of authorities)) | | | | | |
|---|---|---|---|---|---|---|---|
| | **Count** | **(<80%)** | **(80-90%)** | **(90-100%)** | **(100-120%)** | **(120%+)** | **Mean %** |
| 6✓ | 3 | 1 (33%) | 1 (33%) | 1 (33%) | 0 (0%) | 0 (0%) | 85.18 |
| 5✓ | 17 | 4 (24%) | 1 (6%) | 6 (35%) | 5 (29%) | 1 (6%) | 90.43 |
| 4✓ | 41 | 8 (20%) | 3 (7%) | 15 (36%) | 14 (34%) | 1 (2%) | 95.75 |
| 3✓ | 59 | 7 (12%) | 6 (10%) | 30 (51%) | 15 (25%) | 1 (2%) | 93.76 |
| 2✓ | 72 | 18 (25%) | 8 (11%) | 24 (33%) | 20 (28%) | 2 (3%) | 89.94 |
| 1✓ | 56 | 16 (29%) | 0 (0%) | 19 (34%) | 19 (34%) | 2 (4%) | 91.85 |
| 0✓ | 22 | 0 (0%) | 3 (14%) | 15 (68%) | 4 (18%) | 0 (0%) | 96.50 |

The figure demonstrates the high prevalence of the criteria tracked in the first strand of the study – only 22 of the forms in the sample (8%) did not exhibit any. It also suggests modest variation in the expenditure of DHP budgets across Local Authorities present in the sample relative to the number of criteria satisfied by the forms. However, there is no clear evidence of a direct correlation between more criteria being satisfied and lower DHP budget expenditure.

The analysis below draws out common themes from the sample and refers to the data on the key characteristics outlined above. As would be expected from a scheme characterised as 'postcode lottery' (Work and Pensions Committee, 2016, pp. 1, 16), there are sizable variations

between authorities. The examination that follows is not exhaustive, but instead focuses on drawing out common themes following the two stages outlined above. The three areas examined below all demonstrate the fettering potential of application forms, dealing respectively with: imposing exhaustive criteria, self-classification/the assessment of irrelevant considerations, and the imposition of evidential requirements.

**Imposing exhaustive criteria**

Application forms are, by their nature, a 'necessarily interactive' (Brenneis, 2006, p. 42) feature of claiming welfare assistance. The questions, checklists, and empty boxes are presented as a 'discretionary move' on the part of the form filler, inviting choice on how to respond (Reed, 2006, p. 168). However, in limiting the information the form-filler can provide to the format of the form, it is what Cowan and Halliday describe as a 'coerced choice' (2003, p. 145, 207), sometimes referred to in earlier analyses of bureaucracy as 'constrained choice' (Bush & Gordon, 1978, p. 22). Some constraint is an administrative reality; checklists, tables and other formats are useful administrative tools – otherwise, we are left simply with large spaces to input text that does little to assist with administrative efficiency. However, in situations where an application form provides a limited set of options to the filler, the form can in effect impose an exhaustive set of criteria, fettering a subsequent discretion decision.

A stark example of this is the inclusion of specified time periods for DHP awards. 21% of the sample forms provide some form of checklist delineating intervals for support, such as '4 weeks or 8 weeks', or impose maximum time limits, most commonly, 26 weeks. 47% of the forms contain text that states DHPs are exclusively short-term and/or cannot be renewed indefinitely (see Figure 3).

Figure 3. Example excerpts of imposed time increments.

The 21% of forms that provided a prescribed checklist did so in one of two ways. The minority gave definitive cut-offs without the opportunity to request additional support, as per South Cambridge District Council's excerpt. Those requiring support after this period elapses are required to re-apply using the same form, with further awards consequently also limited to a 26-week period.

***Form source***: South Cambridgeshire District Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2ok3Ne3> accessed 29 August 2018.

**B - Housing benefit and/or council tax benefit**

**Please tell us how long you need this help for**

❑ 4 weeks ❑ 8 weeks ❑ 13 weeks ❑ 26 weeks

**When do you need the help from?**

The majority provide some (often very limited) space, either directly next to the checklist or elsewhere in the form, for the applicant to set out reasons for requiring a longer award. Within Doncaster Metropolitan Borough Council's form, the space provided to explain longer-term needs is limited tightly to a box just a few centimetres in height.

***Form source:*** Doncaster Metropolitan Borough Council, 'Application for Discretionary Housing Payment Support'<https://bit.ly/2N51h9O> accessed 29 August 2018.

Please tell us how long you need extra help with your rent for.

☐ 4 weeks ☐ 8 weeks ☐ 12 weeks ☐ 26 Weeks

If longer than 26 weeks please tell us how long and why this would help:

47% of the sample forms do not provide intervals, but instead detailed the 'short term' nature of DHP funding in explanatory text on the form. A typical approach is that of Rother District Council, which frames subsequent questions by warning that the scheme is a 'short term emergency fund' that is not a 'permanent way around' shortfalls.

***Form source:*** Rother District Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2okPJBf > accessed 29 August 2018.

The Council considers that the DHP scheme should be primarily seen as a short term emergency fund. It should not be considered as a permanent way around any current or future entitlement restrictions set out within the Housing Benefit legislation. There is a legal limit on the amount Councils can pay in Discretionary Housing Payments each year for people in their area. This means that not everyone who claims will receive a payment. Rother District Council will operate the DHP Scheme so that those they consider most in need will receive a payment.

These time increments appear entirely arbitrary. This confinement of award length at the point of application sits oddly alongside the emphasis given by the Government on the possibility of 'indefinite' awards for some claimants, particularly for those with long term or permanent disabilities (HC Deb, 13 March 2014, vol.577, col.405). The central DHP guidance itself states that there is 'no limit' on the length of awards (DWP, 2017) and government ministers have been at pains to underscore that 'long term [DHP awards] can be made' (HL Deb, 10 November 2014, v757 c5), with it being 'perfectly open' to local authorities to make a 'long term award where someone has a long-term condition' (HC Deb, 28 October 2014, v586 c195).

This is more than merely an indication of Government preference. The capacity of DHPs to mitigate housing benefit reductions in full for some classes of claimant with long-term needs has been a key plank of the Government's defence of the scheme in high profile challenges to the 'bedroom tax' and benefit cap policies. In *Carmichael,* the court was satisfied that the broader class of disabled tenants affected by the bedroom tax could 'be considered on an individual basis under the DHP scheme' ([53]) and that consequently the Secretary of State's decision to 'structure the scheme as he did was reasonable.' ([41]). The expectation is that local authorities will identify households which warrant mitigation and provide indefinite support under the scheme where appropriate, a reliance on what Brady characterises as 'imaginary administrative decisions' to avoid otherwise unlawful discrimination (Brady, 2012, pp. 6-7).

The format of these forms, therefore, carry two key implications. First, by delineating time-periods for support, the application form itself is severing the link between the applicants' need and the administrative workers' assessment. Applicants are either coerced into requesting a finite award, or cannot do otherwise, even where their circumstances (such as those with permanent disabilities) are likely to warrant indefinite support. Second, they carry a concomitant requirement to re-apply at the end of this prescribed period, compelling the applicant to complete the form again for another pre-determined fixed period to maintain support. Unlike other assessments of 'applicant fatigue', where claimants have to navigate several stages to attain support (Cowan & Halliday, 2003, p. 138-140), here it is the same stage having to be navigated at repeated intervals.

More fundamentally, it is likely the approach of South Cambridgeshire Council in Figure 3 – replicated in 21% of the sample – falls foul of the principle against fettering discretion. By effectively limiting the time increment for support through the application form itself, the

authority is declining to exercise their discretion to make an indefinite award, particularly for those claimants with disabilities who led to the court's emphasis on 'individual evaluation' under the DHP scheme in *Carmichael* ([61]-[62]). South Cambridge's DHP policy states that 'the duration of an award shall be determined with regard to the particular circumstances of the case' (South Cambridgeshire District Council, 2013, p. 2), yet – in *fact* – the application form enforces a finite, exhaustive list of time intervals. This definitive cut-off is to 'shut [the administrative worker's] ears to an application' for longer support (*British Oxygen Co Ltds v Board of Trade* [1971] A.C. 610 [625]).

**Self-categorisation and (ir)relevant considerations**

DHP application forms provide further examples of imposing exhaustive criteria. Figure 4 details instances of self-categorisation, where applicants are required to tick the relevant pre-determined category to which they belong, and to elaborate – often within a tight space – on their membership of it. Such an approach was evident in 45% of the forms in the sample. An applicant may initially be struck by the haphazard arrangement of the different options presented, with little obvious connection between the items and missing categories which would appear to be warranted (for instance, if 'short-term' problems are a relevant category in Birmingham City Council's application form, why not 'long-term'?).

Figure 4. Example Excerpts of Self-classification

45% of the forms in the sample provide a finite list of pre-determined categories and ask the form-filler to indicate to which (if any) they belong. Litchfield District Council and Birmingham City Council form are examples of this. The former details nine separate categories, with the applicant required to tick those applicable and expand on their reasons in the column on the right-hand side or in a subsequent text box titled 'Other information' (referred to above as 'section 4'). There is a (seemingly arbitrary) limit imposed of two categories – if applicants considered themselves to fall into more, they would have to choose which they considered the most important.

***Form source:*** Lichfield District Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2N1NKzB> accessed 29 August 2019.

| **Circumstance – tick up to 2 boxes** | √ | **Additional information**<br>**If you need more space for your answers please use section 4** |
|---|---|---|
| The property is significantly adapted for disablement needs of someone in the household. | | Please describe the adaptations that have been carried out. |

Birmingham City Council provides a smaller number of categories with a separate box for outlining the reasons for self-classification. In addition to these categories, the form provides limited space within its initial pages for describing general circumstances. The role or importance of these categories, therefore, is not clear to whoever is filling in the form.

***Form source:*** Birmingham City Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2BXCHmP> accessed 29 August 2018.

**Which of the following categories apply to you? You may tick more than one box.**

You need short term help to move into longer term housing of a good standard of repair. ☐

Living in this area means a better chance of retaining or obtaining employment. ☐

You have short term problems that you cannot deal with at the moment. ☐

You have debt problems. ☐

You need help or guidance to find out what other benefits you may be entitled to. ☐

**Please state the reason(s) why you fall into one of the above categories:**

This practice demonstrates that the DHP application forms are not mere 'containers [or] vessels' (Grabham, 2016, p. 33) for information, designed to communicate passively the basis of the individual's application. Instead, the limited options offered restrict how the applicant can make their case for remaining in the property and require that they articulate it through the confines imposed by the form. An applicant affected by the 'bedroom tax' policy may have many reasons for wishing to remain in their current area: family ties, schooling, and caring responsibilities being three common motivations (Moffatt et al, 2015). The excerpt from Birmingham City Council's application form, detailed in Figure 4, instead provides only one option, 'living in this area means a better chance of obtaining or retaining employment'. In limiting responses in this way, these forms are doing more than trying to cater to a 'presupposed' applicant (Jacob, 2007, p. 255). They are pre-determining finite 'exceptional circumstances', a process so often criticised by the courts when reflected in policies (*R v London Borough of Bexley* [1995] E.L.R. 42 [55]).

The form excerpts in Figures 5 and 6 demonstrate the other side of this phenomenon. Instead of limiting the provision of information by an applicant, the examples here instead require seemingly irrelevant information to be disclosed. Figure 5 focuses on two examples of this: questions about selling belongings/assets and financial support/alternative accommodation available from family and friends. These questions are asked of all the authority's applicants, including at reapplication, without any framing or guidance.

Figure 5. Example excerpts forcing consideration of specific issues.

7% of the sample forms asked applicants to detail belongings or assets they could sell to help meet their housing benefit shortfall. These were almost always accompanied by a blank box in which the applicant could explain more about their possessions.

***Form source:*** Harrow Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2MDVyIv> accessed 29 August 2018.

20. Do you have any belongings that you could sell to help with your expenses? Yes ☐ No ☐

If yes, please give details?

***Form source:*** Harlow Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2wwX9VB> accessed 29 August 2018.

14. **Have you sold any assets, property or belongings to help pay the rent or do you have any that you could sell?** Yes ☐ No ☐

If YES, please give details.

Questions about financial support, or even possible accommodation, by family and/or friends were much more common, present in 42% of the sample forms. Most were framed as general questions (such as in Eden Council's form below) but others instead required the applicant to justify why they *could not* live with family/friends (as in Burnley's example below).

***Form source:*** Eden Council, 'DHPs' <https://bit.ly/2wqCUJZ> accessed 29 August 2018.

7. Do you have any relatives or friends who could help you out? Could they provide you with accommodation, if only temporarily? Could they, or anyone who lives with you, help you with the rent/council tax or any other household bills?

***Form source:*** Burnley Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2wqHpDm> accessed 29 August 2018.

Could you live with relatives or friends? ☐ YES ☐ NO

If no, please give reason.

Figure 6 outlines the widespread imposition of conduct conditionality through DHP application forms. 77% of the forms in the sample included questions similar to those detailed here. Internal local authority policies have described the award of DHPs as 'similar to the claimant commitment' within Job Seeker's Allowance/Universal Credit (City of Lincoln Council, 2015), and the tying of conditions to awards as 'good practice' (Reading Borough Council, 2015). These questions require applicants, both at the point of initial application and at each re-application, to respond to requests to substantiate their conduct or to detail what they have done to 'help yourself'.

Figure 6. Example excerpts of demands to substantiate conduct conditionality.

These widespread questions on conduct conditionality either invite responses that address capacity to mitigate one's situation (for instance, the lack of available alternative properties or a lack of capacity to work) or reasons why the individual needs to remain in that specific property (because, for instance, it is significantly adapted to meet a disability need and so on).

***Form source:*** Doncaster Metropolitan Borough Council, 'Application for Discretionary Housing Payment Support'<https://bit.ly/2N51h9O> accessed 29 August 2018.

What have you done to help yourself to resolve the difficulties you have in paying your rent? For example, have you tried to find smaller or more affordable accommodation, asked your landlord to reduce the rent, or sought help and advice with budgeting and managing your money? If you have not done anything to help yourself, please say why.

Doncaster's form demonstrates the Janus-faced nature of the questions asked, with requests to either detail what you have done, or the reasons why you have not done anything. In common with the vast majority of Local Authorities, all re-applications are also assessed on the basis of this same form, meaning that this question must be answered by all re-applicants, regardless of the reason for their initial award (which may, for instance, be due to a permanent disability).

***Form source:*** Salford City Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2BX4rYQ> accessed 29 August 2018.

**Please sign below to give us consent to contact Job Centre Plus to confirm your attendance on work related training / work experience**

Your Signature: –

This requirement within Salford City Council's form is on a page with a series of questions about conduct conditionality, including questions asking how many bids on alternative properties the applicant has made, and other steps they have taken to move to cheaper accommodation.

***Form source:*** Hambleton District Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2MDVSHd> accessed 29 August 2018.

| |
|---|
| Can you change your spending patterns on non-essential items? Ie cigarettes, luxuries etc, in order to pay rent shortfall? |
| Are you taking any long-term action to help with the problems meeting your housing costs and if so, what action are you taking? |

These two questions in Hambleton's form sit alongside fifteen others asking about the individual's conduct and circumstances, including what the applicant has done to increase their hours at work or find a job, and whether they have considered letting any 'spare' room(s) to a lodger.

Both figures here demonstrate how application forms are capable of soliciting irrelevant considerations. The fettering principle at play – outlined above – is a straightforward one: 'even a factor that may properly be taken into account…may become an unlawful fetter' if it becomes 'a general rule that distorts the purpose of the statutory scheme' (Woolf et al, 2018, at 9-008). The imposition of conduct conditionality – despite being widespread in the sample (present in 77% of forms) – distorts the discretionary power conferred by the under-pinning Discretionary Financial Assistance Regulations 2001. Although these regulations confer a broad discretionary power to local authorities to persons who 'appear…to require some further financial assistance…in order to meet housing costs' (reg. 2(1)(b)), these questions in Figure 6 do not deal with financial need at all, but instead prior conduct. They, in effect, ask if the applicant is 'deserving' or 'undeserving' of assistance: if they cannot demonstrate they have helped themselves, why should the local authority assist?

This practice also raises concerns over compound conditionality; namely, where conduct in one strand of welfare provision is contaminant with another. Conduct conditionality is already practised extensively in of out-of-work support (for recent work on Universal Credit and Jobseekers in particular, see Wright et al, 2018; and Stewart and Wright, 2018). Linking the satisfaction of one set of conditions – such as Salford's requirement in Figure 6 for the applicant to sign to allow contact with Job Centre Plus – with eligibility for DHP payments demonstrates how one 'regime of conditionality' can 'compound' vulnerabilities already experienced elsewhere (Fletcher et al, 2016, p. 171). Losing one could mean losing the other, despite both being statutory disparate and intended to address different needs. This practice is completely outside the scope of the Discretionary Financial Assistance Regulations, which focus entirely on financial need for housing costs.

The questions outlined in Figure 5 – on selling belongings and living with/support from family members – continue this 'deserving/undeserving' distinction, which sits oddly alongside the DWP's characterisation of the underpinning statutory purpose of DHPs in successive judicial review challenges. In the context of the 'bedroom tax' policy, in *Carmichael,* the majority of the UKSC agreed with the Government that those requiring an additional bedroom by reason of a disability, or as a result of being enrolled in a sanctuary scheme for victims of domestic violence, could 'be considered on an individual basis under the DHP scheme' as opposed to being subject to a statutory exemption from the policy (para.53). Questions about selling

belongings and soliciting money from family members demonstrate starkly the 'stricter means test' that occupied Lady Hale in her (partially) dissenting judgment ([77] (per Hale LJ)).

**Evidential requirements**

Evidence is often analysed as a document in its own right, with studies focusing on how some documents can achieve 'scientific authority' (Biagioli, 2006, p. 127-128) over others. Grabham's analysis of the work of medical reports to 'instantiate' the HIV virus in discrimination claims (Grabham, 2016, p. 70-72), or Valverde's critique of police evidence on intoxication in prosecutions for impaired driving offences – particularly its uncertain status between 'expert evidence' or 'eyewitness evidence' (Valverde, 2003, p. 186-187) – demonstrate the value of this approach. However, in addition to existing as evidence in their own right, documents themselves are often used to enforce specific evidential requirements; namely, where one document requires others to be submitted alongside it in an application.

These evidential requirements contained in documents can have acute effects. As a key barrier in the 'bureaucratic hurdles' to attain assistance (O'Brien, 2017, p. 6; Sossin, 2004, p. 365), the failure to submit required evidence – or, perhaps more accurately, the failure to identify correctly the evidence required of you and to be able to access it for submission – is fatal to a social security claim. O'Brien traces the role of a Government-created questionnaire for the 'genuine prospect of work test', which directs its user to only two forms of permissible evidence (O'Brien, 2017: 143-144). Here, the document and its guidance is becoming 'determinative of outcomes, and of the law' (ibid). Put another way, a failure to meet evidential requirements, because relevant documentation is not available or is engaged in a parallel application elsewhere in the social security system, is a form of '*de facto* disentitlement' (Sossin, 2004, p. 365). Documentation and its implied or explicit evidential requirements can therefore constrain both the submission of applications and – where individual responses have to be evidenced – the material detailed in other questions or boxes.

The data collected in the course of this study suggests that the operation of the DHP scheme by local authorities is tied to an expansive range of evidential requirements contained in application forms, with associated deadlines, documentation or conditionality. Two key evidential burdens are dealt with in turn: (i) requirements for income and expenditure evidence, and (ii) open-ended evidential requests.

***Additional evidence on income and expenditure***

The application forms in the sample demand stringent evidence to support declared levels of income and expenditure. These include both specific requests for documents, particularly bank statements for the previous two months, and broader indefinite requests for simply 'evidence' of 'all of your outgoings', as in Broxbourne's online DHP application form detailed in Figure 7.

Figure 7. Example excerpts of evidential demands.

Perhaps unsurprisingly, all forms make evidential demands. The substantiation of income/expenditure information and/or requests for bank statements was required in the majority of the sample.

***Form source:*** Broxbourne Borough Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2N1Qs8m> accessed 29 August 2018.

Please provide supporting evidence of:

1. All of your outgoings
2. Bank statements covering the last two months
3. Any arrangements to pay off arrears

**File upload 1** Choose File no file selected **Upload**

**File upload 2** Choose File no file selected **Upload**

Broxbourne Council's form, typical of online application forms in the sample, provides ten file upload spaces for the previous two months of bank statements and evidence for 'all of your outgoings'.

***Form source:*** East Northamptonshire Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2omyakg> accessed 29 August 2018.

**13. Please list all the bank accounts and other savings and/or invested money that you are your partner have including joint accounts. Please provide the last two months statements for each account. This includes overdrawn or seldom used accounts.**

East Northamptonshire Council's request for two months' worth of statements for all accounts – including those 'overdrawn or seldom used' is the more common approach taken by Local Authorities, rather than asking for substantiation/receipts for all expenditure listed.

***Form source:*** Dudley Metropolitan Council, 'Application for Discretionary Housing Payment Support' <https://bit.ly/2MXbtAW> accessed 29 August 2018.

**E Your expenditure. You must supply proof of the following:**

| | How Much Per Week £ | Have you provided proof? If not, why not? |
|---|---|---|
| Gas | | |
| Electricity | | |
| Telephone | | |
| Water Rates | | |

Dudley Metropolitan Council incorporates the evidential requirements into the income/expenditure form itself, with all 32 expenditure headings being accompanied by a column asking 'Have you provided proof? If not, why not?' There is very little physical space on the form to address any reasons why proof of expenditure may not be available.

Evidential requirements for income and savings information is not in of itself particularly noteworthy; it is a familiar practice for most non-contributory benefits in the UK social security system. As argued by Taylor-Gooby et al, within a liberal welfare state such as the UK, the 'traditional liberal solution' to any problem is 'extended means testing' (2004, p. 573). An application for housing benefit carries with it a significant evidential burden, including two months' of bank statements, evidence of rental liability and so on, to discharge the detailed requirements laid out in secondary legislation (see Part 6, Housing Benefit Regulations 2006/213, mirrored broadly under Part 6 Universal Credit Regulations 2013/376). What is different here, however, is that it is not just income which needs to be evidenced, but also expenditure.

Requiring evidence for all expenditure – as appears to be the case for Broxbourne Borough Council and Dudley Metropolitan Council's examples in Figure 7 – has the potential to fetter a discretion. It is not difficult to think of instances where it is not possible to evidence expenditure, particularly for those living on low incomes, where high levels of financial exclusion leads to higher cash expenditure patterns as opposed to the regular use of bank accounts (Bramley & Besemer, 2018, pp. 269-273; Tinsen et al, 2014, p. 9). A blanket requirement to evidence as default therefore puts applicants at a disadvantage in the assessment of their finances, or forces them to omit significant areas of expenditure in their application.

## Conclusion

Having provided a series of examples specific to the administration of the DHP scheme, this concluding section revisits the broader arguments of the paper. First, application forms are documents that are capable of engaging the non-fettering ground of review. As policy made manifest, they can serve to demonstrate where a seemingly flexible rule is being implemented in a 'hard-edged' way, fetter a discretion by imposing exhaustive criteria of their own, and force the consideration of irrelevant considerations or omit relevant ones. Application forms used to administer the DHP scheme demonstrate this potential, with the forms themselves working to frustrate the discretion conferred to local authorities under the Discretionary Financial Assistance Regulations 2001. Indeed, the courts have already begun tentatively engage with the use of application forms in the context of DHP administration (see *Halvai,* [34]-[37]).

Second – following this first argument – scholarly attention needs training not only on the development of over-arching policies and guidance, but also on those application processes that are tied to them inexorably. Humble application forms, whether in hard-copy or imposed through an online process, are often the compulsory means through which claimants interact with the welfare state. Their existence is integral to the effective administration of the byzantine system of social entitlement, and they should not escape careful scrutiny in favour of a focus on other, more widely-analysed documents.

Finally, as Stark argues, grounds of review inevitably send a message to administrators (Stark, 2019, 16). To highlight that the non-fettering ground engages with other forms of documentation underscores that a well-crafted (or 'judge-proofed' (Knight, 2009, p. 80)) policy is not enough. An application form can evidence where 'bullet-proofed' (Halliday, 2004, p. 63-64) guiding documentation can still, in fact, fall foul of the principles of good administration. Application processes themselves must be considered carefully to avoid falling foul of the same standards imposed on the drafting and use of policy. This is a message to administrators that reflects both the reality of administration in the welfare state, and the experiences of those claimants that have to navigate it repeatedly. As argued above, if a key principle of the fettering ground is that a decision make must not 'shut his ears' to an application, it is these oft-ignored application forms which are doing the listening. Scholars with an interest in welfare bureaucracy and administrative decision-making should recognise the importance of these seemingly mundane documents.

**Notes**

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[i] See Reg.8(1) and Schedule Two, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013/380. Telephone applications are only possible under circumstances laid out in Reg.8(2).

[ii] In Scotland, DHPs are a devolved matter and the mechanics of the scheme are different. Here, the Scottish Government provides additional funds to local authorities over and above those issued by the UK Government's Department for Work and Pensions.

[iii] The author thanks Sophie Earnshaw and Mike Spencer of the Child Poverty Action Group for sharing the data they collected in 2015.

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