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## Advice and benefits

## &gt; Benefits

> Benefits - fraud  
investigation

&gt; Council tax - discount

> Local Government  
Pension Scheme> Local housing  
allowance

&gt; School - travel support

## Online forms: Discretionary Housing Payment claim form

Reducing your housing costs and/or increasing your income



You are **38%** complete.

Please complete all questions in this section.

5. Please provide details of why you need to remain in the area you are currently living (Required)

# The Palliative Effects of Discretion in the Welfare Reform Agenda: A Case Study of Discretionary Housing Payments

Jed Meers

## The Argument

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- i. Discretionary housing payments have been given a role they cannot fulfil in the 'welfare reform' agenda.**
  
- ii. The courts have made damaging assumptions about the administration of DHPs by local authorities.**

More beef here:



Jed Meers, 'Awarding Discretionary Housing Payments: Constraints of time, conditionality and the assessment of income/expenditure' (2018) 25(2) Journal of Social Security Law



## An Overview...

01

The Problem

02

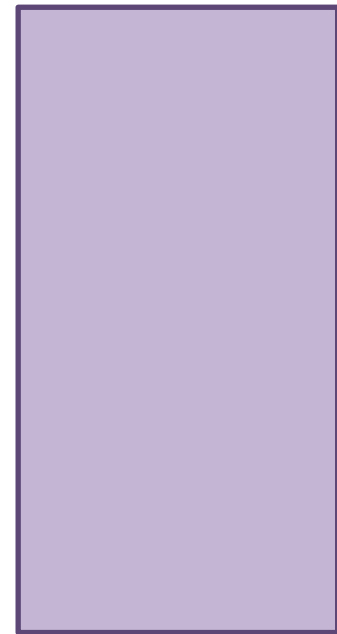
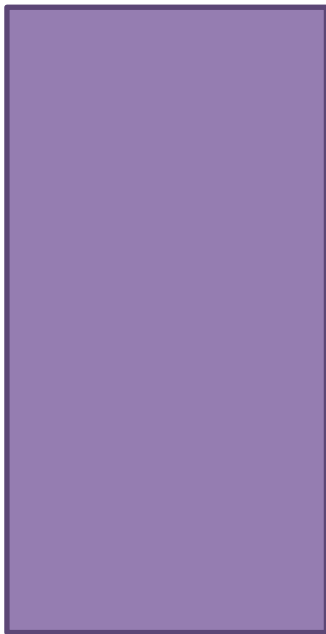
Assumptions

03

Conduct  
conditionality

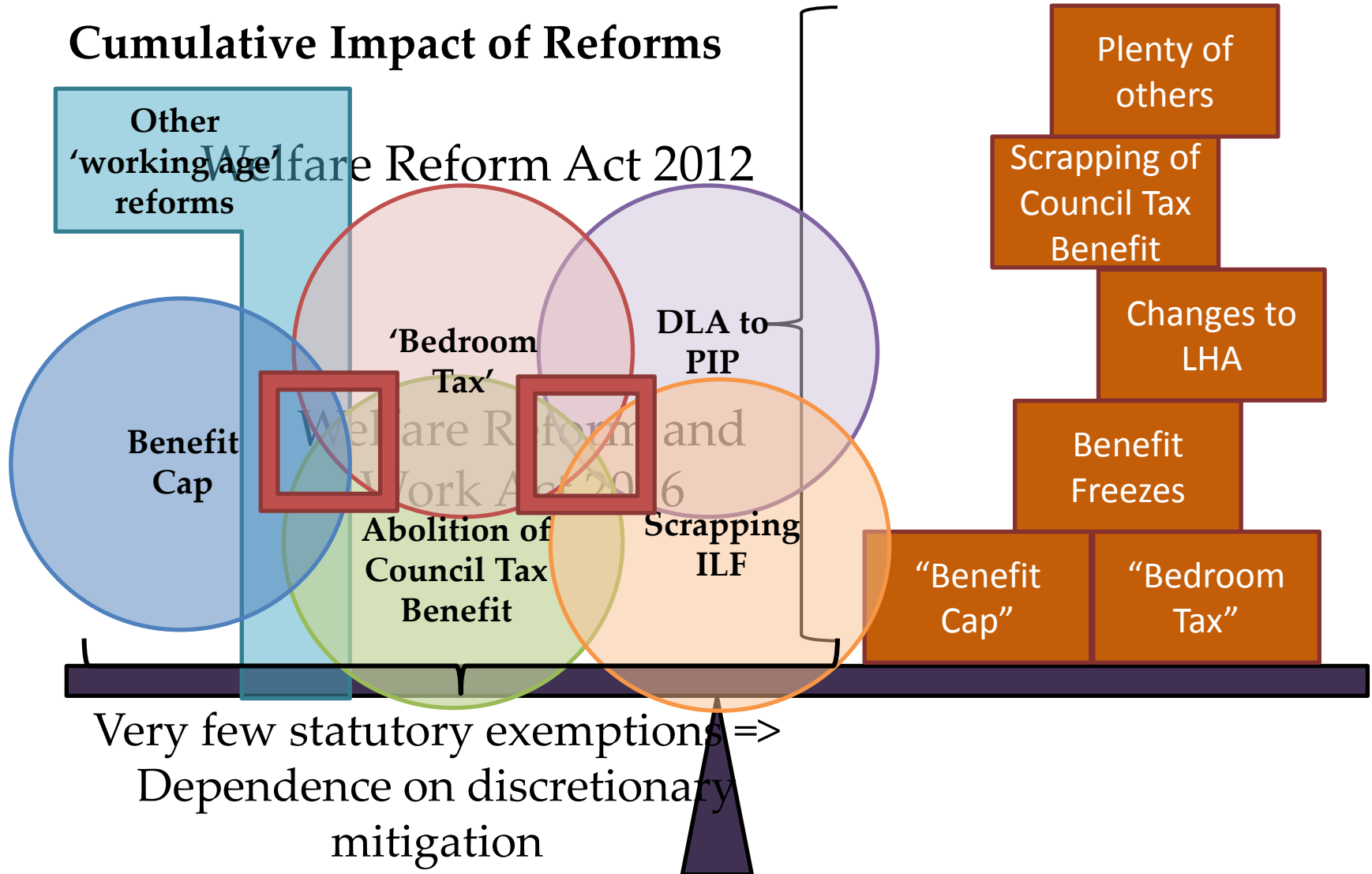
04

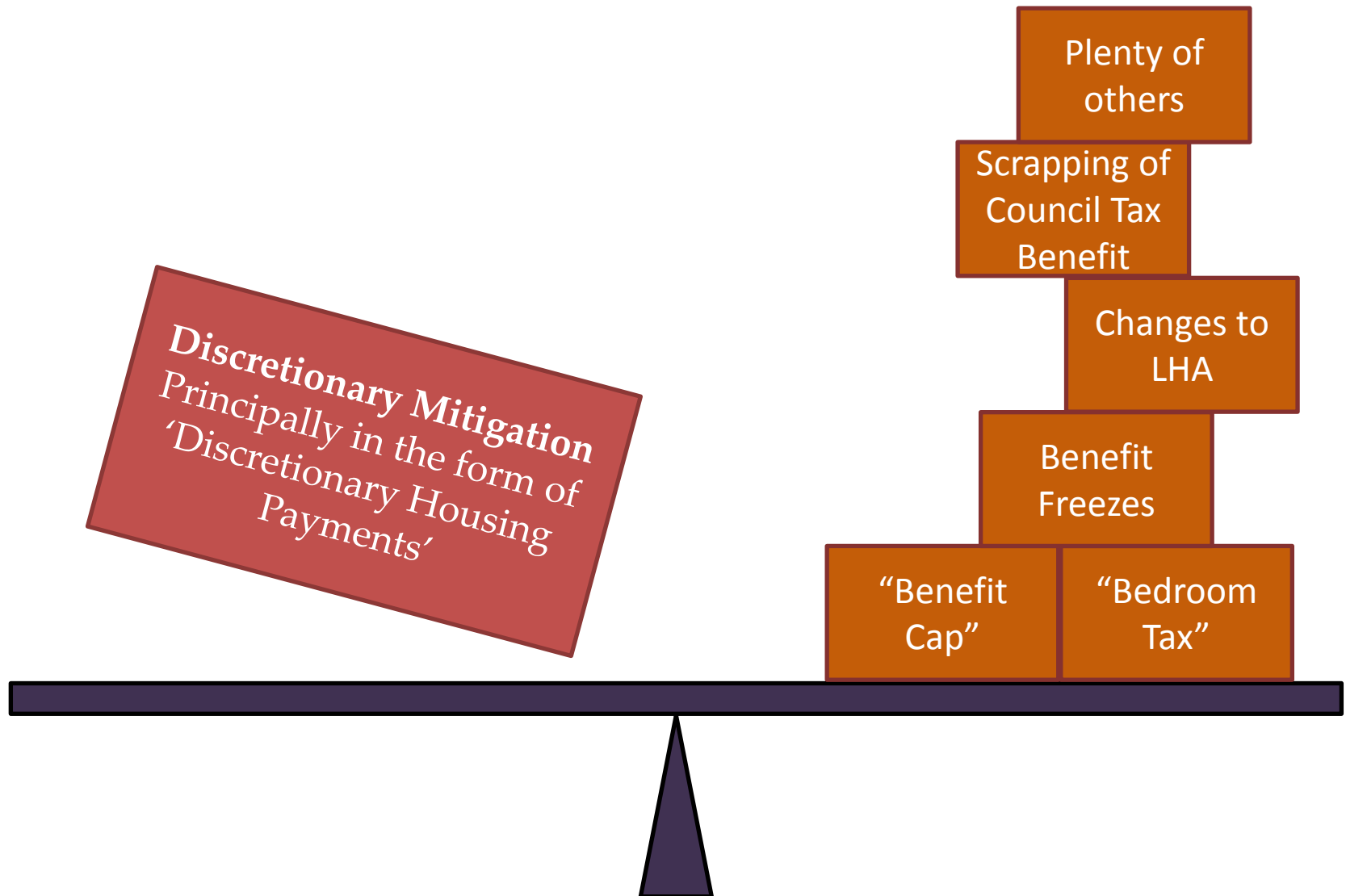
Conclusions  
(?)



# The Problem

## Cumulative Impact of Reforms





# What are DHPs and why is this a problem?

## *Discretionary Financial Assistance Regulations 2001*

£billions  
billion+  
billion+



2002



2



Housing Benefit/Rent  
Differentials continue  
to grow

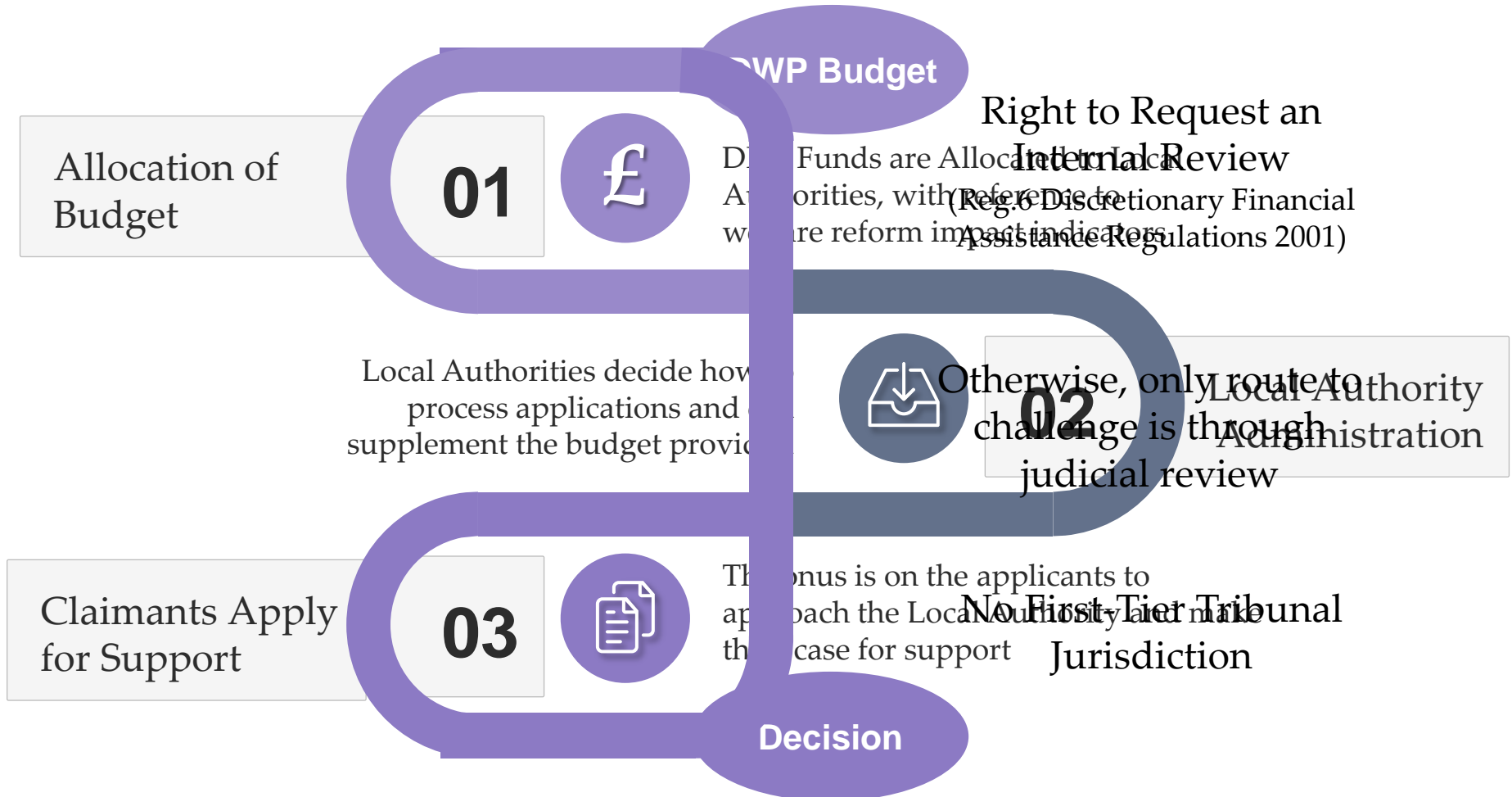
More recent reforms  
already biting



116,000 families  
affected by the lower  
benefit cap alone



# What are DHPs and why is this a problem?





## Three Empirical Strands

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### Vignettes Presented to Local Authorities

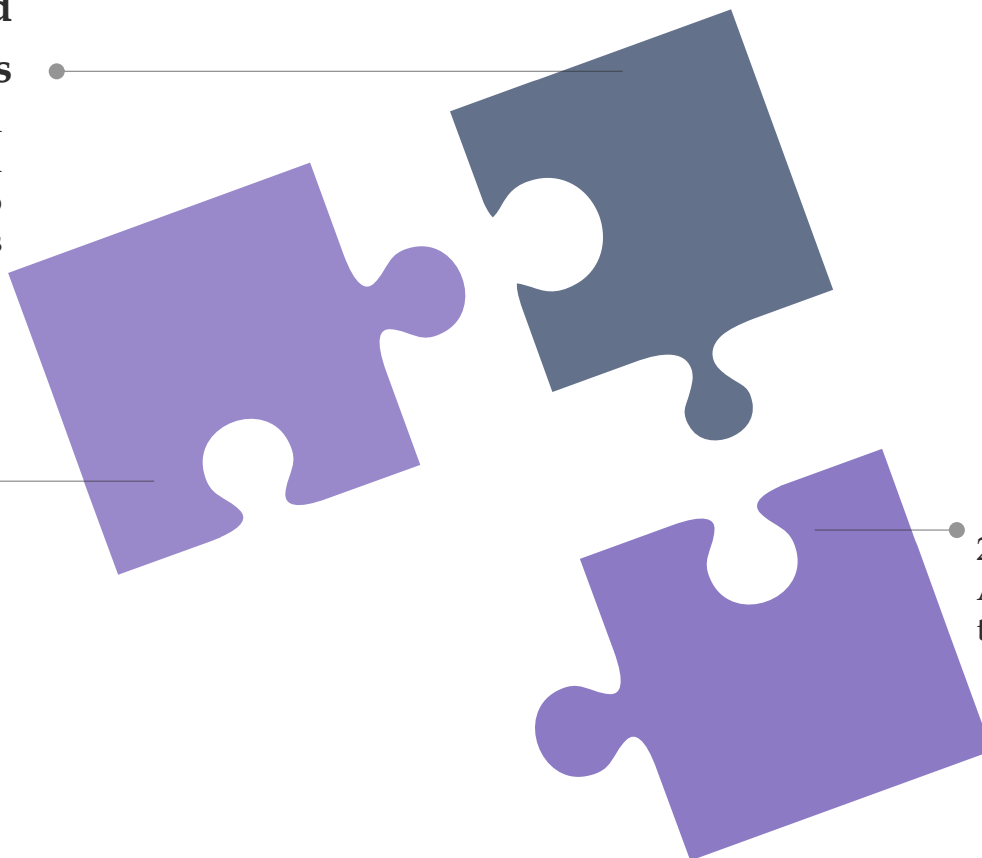
Bespoke online discussion platform where 18 Local Authorities responded to example cases

### Interviews with tenants affected by the 'Bedroom Tax'

A total of 38 interviews with affected tenants, covering, inter alia, the process of applying for mitigation

### Documentary Analysis of Application Forms

242 Local Authority Application forms analysed to identify



# Problematic Assumptions

## Some assumptions in Court judgments

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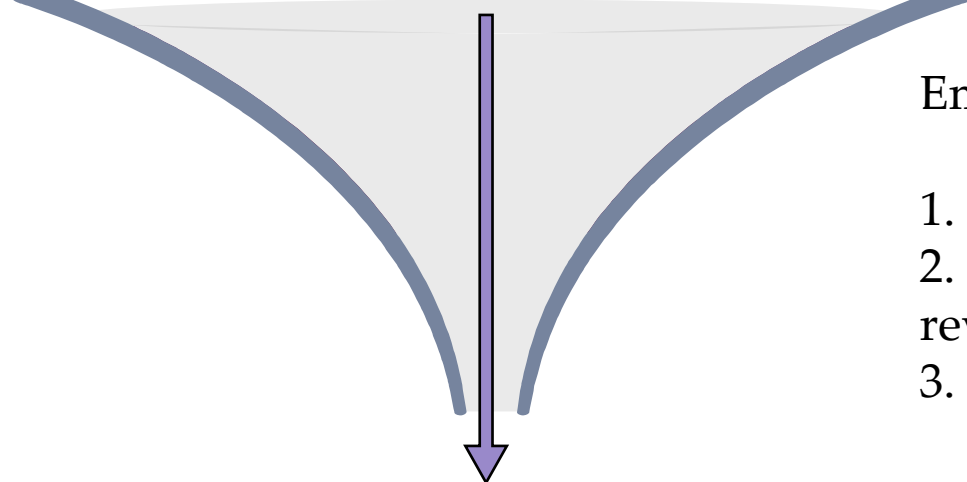
- i. *Secretary of State for Work and Pensions v Carmichael* [2018] [2018] EWCA Civ 548
- ii. *R. (on the application of Carmichael) v Secretary of State for Work and Pensions* [2016] UKSC 58
- iii. *R. (on the application of Hardy) v Sandwell MBC* [2015] EWHC 890 (Admin)
- iv. *R. (on the application of Cotton) v Secretary of State for Work and Pensions* [2014] EWHC 3437 (Admin)
- v. *Rutherford v Secretary of State for Work and Pensions* [2016] EWCA Civ 29
- vi. *R. (on the application of A) v Secretary of State for Work and Pensions* [2015] EWCA Civ 772
- vii. *R. (on the application of MA) v Secretary of State for Work and Pensions* [2014] EWCA Civ 13

## Assumption One

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### Direct Conduit between DWP budget and DHP Availability

#### DWP Allocation



Emphasis on:

1. The evolving size of the 'pot'
2. The assumption that it would be reviewed and 'topped-up' as necessary
3. If it is not spend it is not needed

In particular, see:

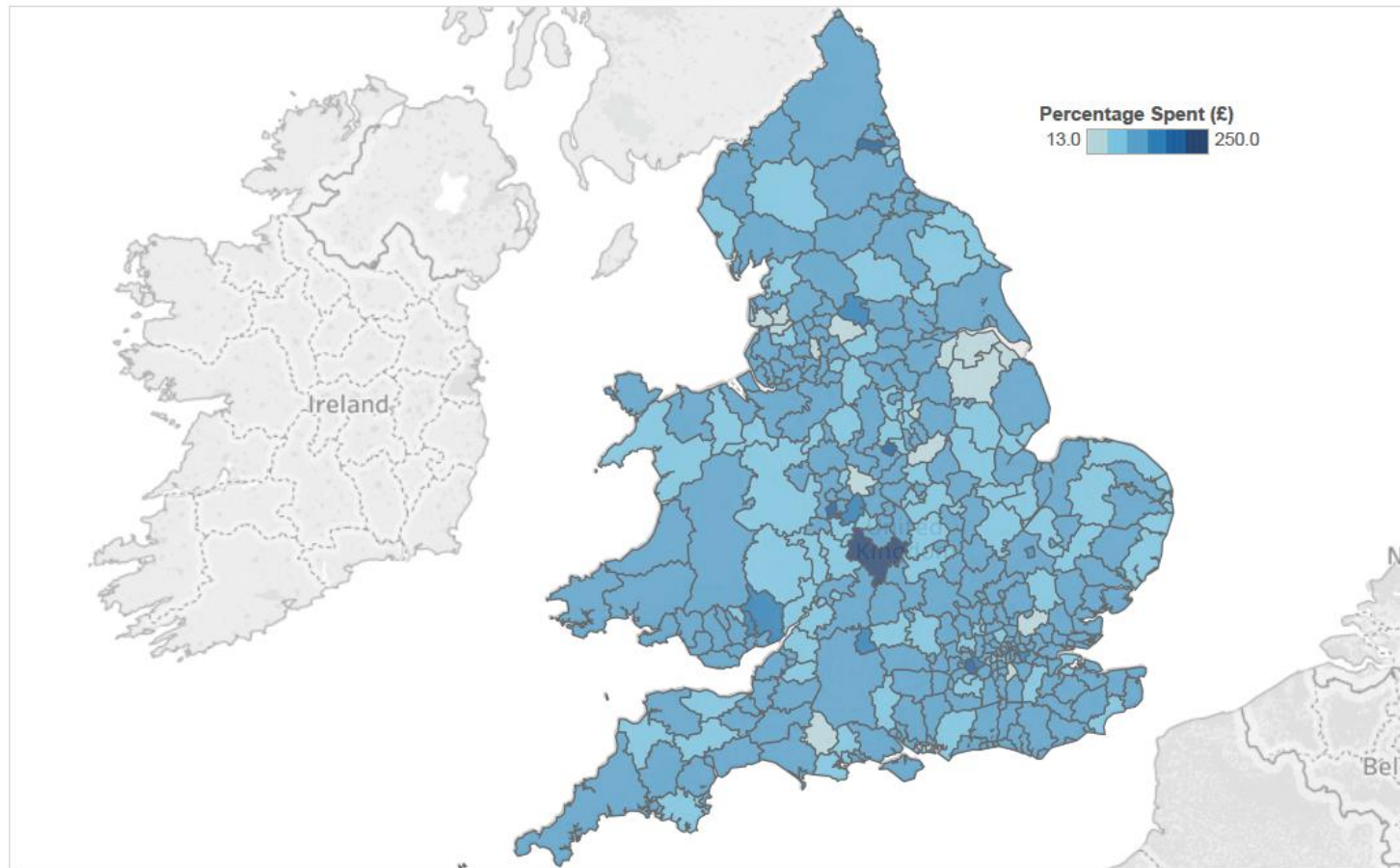
*R. (On the Application of MA) v Secretary of State for Work and Pensions* [2014] EWCA Civ 13. [22]-[24],[32],[72] (per Dyson MR)

*R. (on the application of Cotton) v Secretary of State for Work and Pensions* [2014] EWHC 3437 (Admin). [27] (per Males J)

## Assumption One

### Direct Conduit between DWP budget and DHP Availability

DHP Expenditure 2015/16



Interactive Maps at: [www.socialrights.co.uk](http://www.socialrights.co.uk)

## Assumption One

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### Direct Conduit between DWP budget and DHP Availability

“We would ask for a full breakdown of [the case study claimant's] income and expenditure to establish if she could afford the shortfall herself. Her expenditure on cigarettes would probably not be allowed in full. We would also consider other 'unnecessary' expenditure such as a cable TV, mobile phone etc. We would ask for the last two months bank statements as evidence of her lifestyle - are there regular payments to Starbucks, Mcdonalds etc.”

Local Authority Participant

## Assumption One

### Direct Conduit between DWP budget and DHP Availability

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

If yes, please give details?

**Source:** Harrow Council, 'DHP Application Form'

<[http://www.harrow.gov.uk/download/downloads/id/3477/discretionary\\_housing\\_payment\\_application\\_form](http://www.harrow.gov.uk/download/downloads/id/3477/discretionary_housing_payment_application_form)>

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

If no, please give reason.

**Source:** Burnley Council, 'Application for Discretionary Housing Payment Support'

<<http://www.burnley.gov.uk/sites/default/files/Discretionary%20Housing%20Payments%20application%20form.pdf>>

**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		
House Insurance		
Satellite /Cable TV		
Groceries		
Mortgage		
TV Licence		
Petrol		
Car Tax		
Car Loan		
Car Insurance		
Car Maintenance		
Bus Fares		
Credit Cards		
Catalogue Accounts		

Dudley Metropolitan Council, 'Application for Discretionary Housing Payment Support'  
<<http://www.dudley.gov.uk/EasysiteWeb/getresource.axd?AssetID=196137&type=full&service-type=Attachment>>



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  no file selected

Upload

File upload 2  no file selected

Upload

File upload 3  no file selected

Upload

File upload 4  no file selected

Upload

File upload 5  no file selected

Upload

File upload 6  no file selected

Upload

File upload 7  no file selected

Upload

File upload 8  no file selected

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File upload 9  no file selected

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File upload 10  no file selected

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Broxbourne Borough Council, 'Application for Discretionary Housing Payment Support'  
<<https://www.broxbourne.gov.uk/resident-benefits/discretionary-housing-payment>>

*'You should only take reasonable expenditure into account. However, you need to remember that what is not reasonable for one individual/family maybe reasonable for another.'*

Leeds City Council – FOI/2016/17577

*'For example, housekeeping of £100 per week for a single person is considered to be too high, housekeeping of £15 is considered to be too low. Alcohol and tobacco can be reasonable in small quantities. We need to consider the quality of life of the customer.'*

North Norfolk District Council Procedures: Discretionary Housing Payments – FOI/2016/006827

## Assumption Two

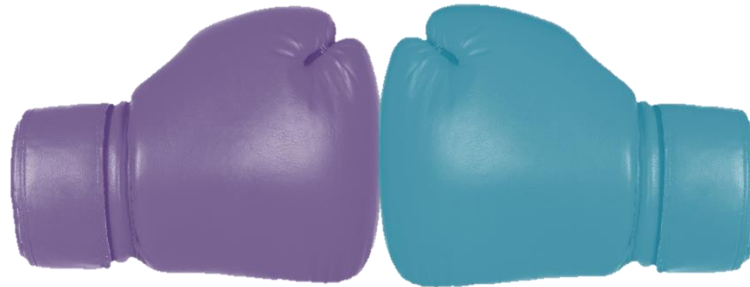
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### DHPs Provide both Flexibility and Security

Greater flexibility to respond to 'changing nature' of disabilities  
(*MA – para 74*)

Exhibit 'local accountability'  
(*Rutherford – para 61*)

Well designed to address short-term issues (*MA – para 41*)



Use justifiable as they 'provide suitable assurance of present and future payments in appropriate circumstances'  
(*Rutherford – para 48; Cotton – para 55; A – para 69; Carmichael – para 21*)

## Assumption Two

### DHPs Provide both Flexibility and Security

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

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

26 weeks is the maximum time for an award – if you require DHP after this time you will have to make a new claim and it will be dependant on your circumstances.

*Form Source:* Teinbridge Borough Council, 'Application for Discretionary Housing Payment Support' <<https://www.teignbridge.gov.uk/CHttpHandler.ashx?id=30155&p=0>>

‘When it was 6 months you were always thinking about it. Are we going to get the money or not? You’re stressing out. What if we don’t get that money, you know what I mean?’

”

Tenant Effected by the “Bedroom Tax”

## Assumption Three

Tying a 'localised approach' with 'austerity'

01

### Importance of the 'Localised Approach'

Repeatedly reiterated by the Courts

*Carmichel* [23] (per Toulson LJ); *MA* [66] (per Dyson LJ)

04

### 'The key is in the title'

Discretionary Housing Payments are intended to confer discretion to Local Authorities, who are best placed to make these decisions  
HC Deb 25 Nov 2013, vol 571, col 13.

### Tied to the

### 'Austerity Agenda'

'Austerity'

*Rutherford* [61] (per Stuart-Smith J)

03

### Guidance underscores it is 'first and foremost...a discretionary scheme.'

Government DHP guidance underscores the importance of "local" knowledge and taking "case-by-case" decisions.

'Shift the place of social security in society.' *MA* [58] (per Laws LJ)

## Assumption Three

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Deliberately fudging it: Avoiding delineation of effects



Conflicts can be 'deliberately fudged' (Prosser, 1981)

Not 'politically innocent' (Featherstone et al, 2012)

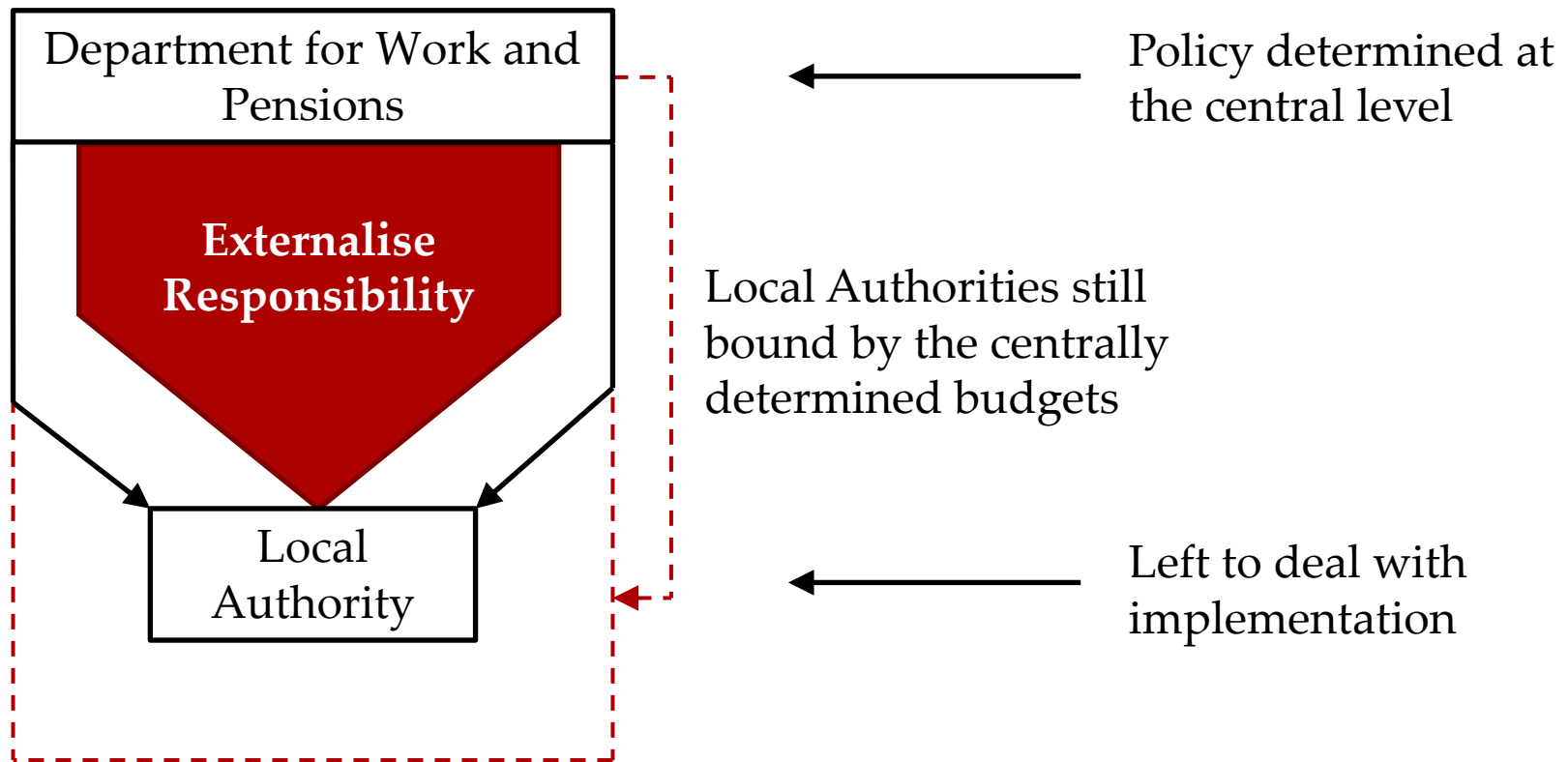
- ✓ 'Victims of domestic violence'
- ✓ 'Lone-parent households'
- ✓ 'Care leavers'
- ✓ 'Families with severely disabled children'
- ✓ 'People with disabilities'
- ✓ 'Jobseekers'
- ✓ 'People on low incomes'

But a few of groups referred  
to in Parliament as being  
dealt with via DHPs

## Assumption Three

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Problem of political asymmetry

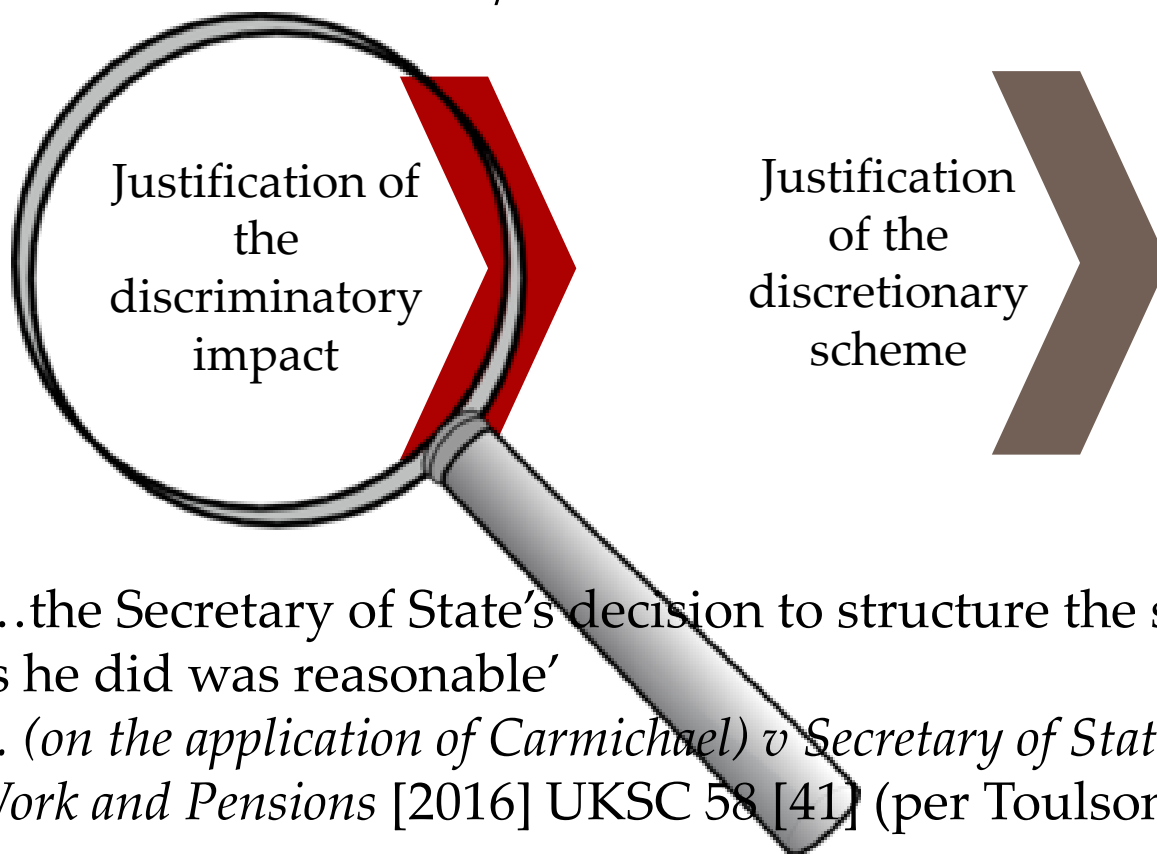


## Assumption Three

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Shifts focus in proportionality exercise

A1P1/Article 8 => Article 14



‘...the Secretary of State’s decision to structure the scheme as he did was reasonable’

*R. (on the application of Carmichael) v Secretary of State for Work and Pensions* [2016] UKSC 58 [41] (per Toulson LJ)



# Conduct Conditionality



*R. (on the application of Carmichael) v Secretary of State for Work  
and Pensions [2016] UKSC 58*



The financial bit was very limited, because I went scribbling all over the form saying, well it's all very well you want to know this bill and that bill...there was a lot they didn't ask about. I volunteered the information to make them think of the real world. Of course, I did have to provide medical evidence to say that I'm on a small budget and I need this.

”

**Tenant affected by the “Bedroom Tax”**

“Actually, my spare room is basically a filing room now because of all this stuff. I have masses, volumes, folders, spilling over, full of all these letters.”

”

**Tenant affected by the “Bedroom Tax”**



01

Focusing on the outcome  $\neq$  a focus on a  
'disarticulated bureaucratic event' (Hoag, 2011)

If we just focus on the outcomes of decisions and not the process (documents) which feature as part of them, we are missing some of the picture

Documents are particularly 'potent in

02

social welfare law where they play a crucial part in resource allocation' (Carr, 2015)  
Understand "folding work" physically constrain what claimants can do and how they present themselves (Grabham, 2017)

Application forms are designed to 'elicit' responses which 'they can shape but not wholly control.' (Brenneis, 2006)

03

Can display 'transparent arbitrariness'  
(Valverde, 2003)

Sometimes forms require certain information or make demands which seem to have no particular reason behind them at all



# City of Westminster

Westminster council's practice of requiring evidence of claimants:

- (i) having effectively sought work,
- (ii) having searched for a more affordable property.

Permission granted, but settled before the full hearing...



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 Metropolitan Borough Council, 'Application for Discretionary Housing Payment Support' <<https://dmbcpublicwebsite.blob.core.windows.net/media/Default/CouncilTaxBenefits/Documents/Discretionary%20Housing%20Payment%20form.pdf>>

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

Your Signature: –

Salford City Council, 'Application for Discretionary Housing Payment Support' <[http://www.salford.gov.uk/media/373766/discretionary\\_housing\\_payment\\_application.pdf](http://www.salford.gov.uk/media/373766/discretionary_housing_payment_application.pdf)>

Can you change your spending patterns on non-essential items? le cigarettes, luxuries etc, in order to pay rent shortfall?

Hambleton District Council, 'Application for Discretionary Housing Payment Support' <[https://www.hambleton.gov.uk/downloads/file/540/dhp\\_form\\_2015](https://www.hambleton.gov.uk/downloads/file/540/dhp_form_2015)>



”

*What they need to understand, with the condition I've got...[spina-bifida]...it's never, ever, going to get any better. It's never going to improve, my situation, unless a miracle happens...so, I mean it's just daft when you get these forms. Like, they start off by saying – have your circumstances changed? – well, no. Then you go down the page they ask you virtually the same question in a round-about way – are you still disabled, what have you done? – it's really stupid the way it's done. I suppose they can't be too careful.*

**Tenant affected by the “Bedroom Tax”**



UNIVERSITY  
*of York*

York Law School

# Self-Categorisation



**Form Source:** Lichfield District Council, 'Application for Discretionary Housing Payment Support' <<https://www.lichfielddc.gov.uk/Residents/Benefits/Downloads/Discretionary-housing-payments-application-form.doc>>

Applicant – tick one box only		Additional information If you need more space for your answers please use section 4
A household member has a disability.	✓	Disability living allowance (DLA) must be paid, at any rate and for care and/or mobility. For anyone of pensionable age, attendance allowance (AA) must be paid. Please do not tick this box if you are not getting DLA or AA.
A household member is receiving care.		Carers allowance must be paid to someone providing the care. Please do not tick this box if no-one is getting carers allowance.
A household member is vulnerable.		Please describe the nature of the vulnerability.
A member of the household is a frail elderly person who would find it difficult to move.		Please tell us why you need to remain in your current property.

**Form Source:**

Birmingham City  
Council, 'Application  
for Discretionary  
Housing Payment  
Support'  
<[https://www.birmingham.gov.uk/download/downloads/id/4381/application\\_for\\_housing\\_and\\_council\\_tax\\_discretionary\\_pay.pdf](https://www.birmingham.gov.uk/download/downloads/id/4381/application_for_housing_and_council_tax_discretionary_pay.pdf)>

**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:**

# Conclusion

## The Argument

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- i. Discretionary housing payments have been given a role they cannot fulfil in the 'welfare reform' agenda.**
  
- ii. The courts have made damaging assumptions about the administration of DHPs by local authorities.**

More beef here:



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*That's all Folks!*