

Discretionary Housing Payment Policy 2024 2025

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Background

Discretionary Housing Payments (DHPs) were introduced in July 2001. The general provisions for DHPs are contained within the Discretionary Financial Assistance Regulations 2001.

These state – a relevant authority may make payments by way of financial assistance, ('Discretionary Housing Payments') to persons who is in receipt of:

- Housing Benefit, or
- the housing element of UC and the end of the first assessment period has passed

It must be noted that although funded by central government the DHP's are not benefit payments and are cash limited.

The local authority (LA) must be satisfied that the customer is in need of further financial assistance with their housing costs.

Financial assistance

The phrase 'further financial assistance' is not defined in law. Luton Council may interpret the phrase however they wish; taking into consideration the claimant's financial circumstances and any other relevant factors.

However, in most cases, a claimant will need to demonstrate that they are unable to meet housing costs from their available income or that they have a shortfall in meeting their housing costs.

Housing costs

'Housing costs' are not defined in the Discretionary Financial Assistance (DFA) Regulations 2001 and this approach purposely allows broad discretion for interpretation. In general, 'housing costs' usually refers to rental liability, as well as:

- rent in advance
- deposits
- other lump sum costs associated with a housing need such as removal costs.
- dhp's can also cover shortfalls between housing support and actual rental costs, for example, where benefit cap or Removal of the Spare Room Subsidy (RSRS) deductions are applied
- owner-occupiers are not eligible to receive DHPs, with the exception of Shared ownership properties which carry a rental liability

The main features of the scheme are that:

- payment is discretionary, there is no statutory right to a payment
- the amount available to the local authority is cash limited in any financial year by the Secretary of State
- the local authority has discretion in determining how to operate the scheme
- the DHP fund is allocated to each LA at the start of each financial year
- hb/uc must be in payment in the benefit week/s that a DHP award is made for

Policy aims

To ensure that DHPs contribute to the Council's aims and objectives and to promote social and financial inclusion for its residents while not subsidising poor or inappropriate accommodation

Objectives

The LA will consider making a payment of a DHP to claimants who meet the qualifying criteria as specified in this policy. Each application for a DHP will be treated strictly on its merits and all customers will be treated equally and fairly when the scheme is administered. The following objectives are linked to the council's corporate aims and objectives and seek through the operation of this policy to:

- prevent homelessness
- alleviate poverty.
- support vulnerable young people in the transition to adult life.
- encourage Luton's residents to obtain and sustain employment. Safeguard Luton's residents in their homes.
- help those who are trying to help themselves.
- keep families together.
- support the vulnerable in the local community.
- help claimants through personal crises and difficult events.

The DHP scheme should be seen as a short-term solution while support/advice is provided to allow the applicant and their household to afford their rent in the medium to long term. It is not and should not be considered as a way around any current or future entitlement restrictions set out within the Housing Benefit / Universal Credit legislation - it should also not be considered a long term fix to a customer's real issues.

Decision making

An application for a DHP must be made via [Luton.gov.uk](https://www.luton.gov.uk)

In deciding whether to make a DHP award the council will take into account the personal and financial circumstances of the customer their family and household members.

- the LA reserves the right to request and verify any reasonable evidence in support an application for a DHP claim.
- the claimant will be asked to provide evidence alongside the completed application on line within one month.
- if the claimant is unable to or does not provide the required evidence, the LA will NOT consider the application.
- where possible, a referral from a housing officer, homeless officer or other designated official may be accepted as a form of evidence. In such instances, additional verification may not be required.

Once the required information and evidence has been received a decision will be made as soon as reasonably practicable.

All claims for DHP will be treated equally and fairly in accordance with the council's policy

on race, diversity and equality. The council will endeavor to ensure that no-one who applies for a DHP will be treated less favourably than any other person on irrelevant grounds such as age, disability, gender, religious beliefs, marital status, nationality, race or sexual orientation.

What a DHP award cannot be used for

There are certain elements of a customer's rent that cannot be included in housing costs for the purpose of a DHP because the regulations exclude them:

Ineligible charges; for example:

- costs for water
- costs for fuel
- costs for food
- increases in rent due to outstanding rent arrears
- sanctions and reductions in benefit

Please see **Appendix A** at the end of this policy document for further clarity on what DHP's cannot be used for.

Period of award and start dates

The LA will make a decision on the length of time of the DHP award based on the known facts and the evidence supplied and the date the award is due to commence.

The start date of an award will be the earliest of the following:

- the Monday following the date of application.
- if an application is made within one month of the date of a housing benefit decision or universal credit:
- for a new claim, the claim start date
- for a change in entitlement, the date of change
- a DHP award may be backdated if good cause can be proven for a failure to claim sooner. Good cause is not defined and will be dependent upon individual circumstances.

The minimum award period is one day and no award will usually be made beyond two years. At the end of any award period, a new DHP request can be submitted but an award will only be extended in exceptional circumstances. The period of award will also be dependent on the conditions attached to it (see conditional awards).

The award

In deciding whether to award a DHP, officers will take into account any of the following factors, which may be relevant:

- reductions in HB or UC whether the benefit cap has been applied (net of any ineligible service charges)
- reductions in HB or UC for under-occupation in the social rented sector
- reductions in HB or UC because of local housing allowance restrictions
- rent shortfall to prevent a household becoming homeless whilst the housing

- authority explores alternative options
- rent officer restrictions such as local reference rent or shared room rate.
- the financial, medical, or social needs and circumstances of the claimant, their partner and any other persons in the household
- the income and expenditure of the claimant, their partner, and any other persons in the household
- any savings or capital held by the claimant or family members.
- the level of debt of the claimant and family
- the possible impact on the council of not making an award e.g. the pressure on priority homeless accommodation.
- any other special circumstances brought to the officer's attention This list is not exhaustive

When deciding if a person is entitled, or how much to award, an affordability calculation will be carried out.

This will include totaling up income and expenditure for the household and determining what, if any, of the rent charge is affordable.

The levels of expenditure which are considered are defined by the Office of National Statistics (ONS) and are regularly reviewed based on the consumer price index.

The LA will decide how much and for how long to award the DHP based on all of the circumstances. This may be an amount below the difference between the liability and the payment of Housing Benefit and / or Universal Credit.

An award of a DHP does not guarantee that a further award will be made at a later date even if the claimant's circumstances have not changed.

A phased award, when appropriate, will be provided to allow customers to manage their finances and will see a gradual reduction in a payment over a period of time.

The Discretionary Financial Assistance Regulations 2001 (regulation four) require that the level of DHP does not exceed the weekly HB or UC housing element.

Regard should be given to the Court of Appeal's decision in R v. LB Lambeth, ex parte Gargett which sets out that any HB already paid towards 'housing costs' must be deducted when calculating the amount of a DHP to avoid duplicate provision.

See **Appendix D - Legal considerations** for more information.

Rent deposits and rent in advance

A DHP can be awarded for a rent deposit or rent in advance for a property that the claimant is yet to move in to if they are already entitled to HB or the housing element of UC at their present home. Regard should be given to the Court of Appeal's decision in R v. LB Lambeth, ex parte Gargett which sets out that any HB already paid towards 'housing costs' must be deducted when calculating the amount of a DHP to avoid duplicate provision. See **Appendix D – Legal considerations** for more information.

Backdating

When deciding whether to backdate a DHP, each application should be considered on its own merits.

The DFA regulations require that a DHP can only be considered for a period where the linked HB or relevant award of UC is payable. This is of particular relevance to requests for a period of backdated DHP, since backdating cannot cover arrears accrued while not in receipt of these benefits.

Please see **Appendix B** for details on award amounts, periods and a phased award.

Condition based awards

In most instances, Discretionary Housing Payments will be attached to a condition. The LA reserves the right to attach any condition to an award of Discretionary Housing Payments if it will allow the customer to:

- find employment
- find alternative affordable accommodation.
- manage their finances better
- reduce their debts
- become financially independent.

Such conditions may include:

- attending a relevant training course
- receiving debt support and advice
- receiving money management support and advice
- receiving housing advice and actively seeking alternative accommodation

Please see **Appendix C** for more details on condition-based awards.

Failure to comply with any conditions attached will result in the immediate cessation of any Discretionary Support.

Change of circumstances

Customers awarded a DHP must notify the LA online of any changes to their or any member of their family or household's personal or financial circumstances. The DHP may be revised up or down as appropriate.

Notification

The LA will notify the customer of the outcome of their DHP application. Where the application is unsuccessful, the LA will set out the reasons why this decision was made and explain the right of review. If the application is successful, the customer will be advised of:

- the weekly amount of the DHP awarded

- the period of the award
- how, when and to whom the award will be paid
- the requirement to report a change in circumstances.
- the right to request a review of a decision
- award decisions will reflect the fact that customers are expected to make every effort to make adjustments to their circumstances to alleviate the requirement for a further DHP after their current award has ended

Cessation of award

The LA has the right to cease or suspend an award of Discretionary Housing payments when:

- there is no compliance with a condition-based award
- the original award period ceases
- any supporting information/evidence is not provided
- there is a change in address
- there is a change in circumstances that affects Housing Benefit/ UC entitlement
- the LA believe there to be an inaccuracy in the Housing Benefit/ UC/ Discretionary housing Payment claim

The date of any cessation or suspension of an award is down to each individual decision maker's assessment of the circumstances and the reason for the change. In some instances, this may mean there has been an overpayment of Discretionary Housing payments, and this will have to be paid back. Please see the section on overpayments for more information.

The right of review

There is no statutory right of appeal against a DHP decision because DHPs are not payments of benefit. A claimant (or their appointee or agent) who disagrees with a DHP decision may dispute the decision.

They can request a review of that decision. A request for a review should be in writing to the LA within one calendar month of the written decision about the DHP being issued to the claimant.

An officer who was not part of the original decision-making will consider the request for a review. The reviewing officer will notify the customer of their decision, which will be final and there will be no further right of review.

Dissatisfied customers have the option of requesting a judicial review and the local government ombudsman is available if the customer believes there has been maladministration.

Overpayments

The LA may seek recovery of any DHP overpaid. If recovery is sought an invoice will be issued to the customer or the person to whom the DHP payment was made.

DHP's cannot be recovered from ongoing HB or UC or any other prescribed benefits.

The DFA regulations state a DHP award can **only** be recovered if your LA decides that payment has been made because of either:

- a misrepresentation or failure to disclose a material fact by the claimant (either fraudulently or otherwise)
- an error made when the application was determined

Monitoring

Since April 2013, DWP has monitored how DHPs are being used to support claimants affected by the Welfare Reforms. This monitoring information continues to improve the department's understanding of how DHPs are being used.

The department requests information on DHPs at specific times during the financial year, including expenditure and number of awards.

Some of this information, such as the financial forecast and actual expenditure at mid-year and end of year, is mandatory. Other information is voluntary DHP mid-year estimate and final claim forms.

The Discretionary Housing Payments (Grants) Order 2001 (S.I. 2001/2340), amended by The Income-related Benefits (Subsidy to Authorities) and Discretionary Housing Payments (Grants) Amendment Order 2021 (S.I. 2021/2031), places a legal obligation on LAs to submit forms providing details of DHP expenditure within a financial year.

Two forms must be submitted each financial year; a mid-year estimate form by 31 October and a final DHP claim form by 30 April of the following year. LAs is required to complete and return the forms to the department by the required deadline.

In addition to providing details of DHP expenditure, the forms also ask LAs to report voluntary monitoring information.

The mid-year estimate and final DHP claim forms are the mechanism by which DHP funding is provided to LAs.

The forms contain an LA certificate which must be signed by the responsible finance officer within each LA who is designated as such under Section 151 of the Local Government Act 1972.

The responsible finance officer must certify that all entries on the forms are accurate, and expenditure has been incurred in accordance with this guidance and the regulations governing DHPs.

The deadline of 30 April for the final DHP claim form is a critical deadline across government as it allows for faster closure of accounts as required by HM Treasury.

All payments of DHP are recorded as part of the relevant claim on the council's computer system.

Total DHP expenditure will be monitored on an ongoing monthly basis and is reported both externally and internally. The total awarded will be monitored to check that the expenditure will not exceed any budget that is agreed by the council.

DWP are required to monitor how DHP's are being used to support customers affected by the welfare reforms.

In addition to the annual DHP claim form, LA's (LBC) will be requested to provide a broad breakdown of their expenditure.

DWP will be requesting LA's to record the main reason for an award as follows:

- to support customers affected by benefit cap
- to support customers affected by social sector size criteria
- to support customers affected by LHA reforms
- to support customers affected by the transfer from HB to UC Any other reason

Fraud

The LA is committed to fighting fraud. Suspected fraudulent DHP applications will be investigated. Submitting a fraudulent claim for DHP is a criminal offence and offenders may be prosecuted.

Publicity

The availability of the DHP scheme is publicised on the council's Internet and in letters advising customers about their housing and or universal credit awards.

The LA is committed to working with other departments within the council and the wider community such as the voluntary sector and social landlords to provide an inclusive approach to addressing financial difficulties.

Policy review

This policy shall be reviewed at least annually to ensure it meets existing customer demands and reflects any changes to national guidance issued by the Department for Works and Pension's.

Budget restriction

Any award of Discretionary Housing Payment made in accordance with this policy is subject to budget availability. In the event of there being no available budget, Luton Borough Council may refuse an award of Discretionary Housing Payments or amend the award to reflect the budget position.

Linked policies/documents

Other policies/documents that will help in the application and understanding of this policy include:

- Rent Deposit Scheme

Appendices

Appendix A – What DHP's cannot cover

Appendix B – Award periods, amounts, and phased approach

Appendix C – Condition Based Awards

Appendix D – Legal Considerations

Appendix A: What DHPs cannot cover

The Discretionary Financial Assistance Regulations 2001 precludes the following elements of rent, and shortfalls in HB or UC, from being met by a DHP:

Ineligible charges

Service charges which are ineligible for HB cannot be covered by a DHP.

These are as specified in Schedule one to the Housing Benefit Regulations and Schedule one to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations.

Examples of ineligible services charges are charges in respect of:

- the acquisition of furniture or household equipment; and
- the use of such furniture or equipment where that furniture or household equipment will become the property of the claimant by virtue of an agreement with the landlord
- charges for water, sewerage, and environmental services – as defined and calculated under the HB provisions. The service charge rules for UC can be found in the Universal Credit Regulations 2013, Schedule one

Increases in rent due to outstanding rent arrears

Under Regulation 11(3) of the Housing Benefit Regulations and Regulation 11(2) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations, where a claimant's rent is increased on account of outstanding arrears owed by the claimant in respect of their current or former property, the shortfall cannot be covered by a DHP.

Sanctions and reductions in benefit

DHPs cannot meet these because to do so would undermine the effectiveness of the sanctions or reduction in benefit. These are any:

- reduction in Income Support (IS) or income-based Jobseeker's Allowance (JSA(IB)) due to a Reduced Benefit Direction (RBD) for failure to comply with the Child Support Agency in arranging maintenance. The RBD is a reduction in benefit of 40% of the personal allowance and only applies to IS or JSA(IB).
- reduction in benefit because of non-attendance at a work-focused interview. This applies both where the person's HB is reduced and when any other benefit that the person is receiving (such as IS) is subject to a sanction.
- reduction or loss of benefit due to a JSA employment sanction. JSA is not payable

for the period of sanction if they have contributed towards their unemployment status, for example, by leaving employment voluntarily or failing to attend a prescribed training scheme. In such cases it may be possible for a reduced rate of JSA to be paid under the JSA hardship provisions.

- reduction in benefit due to a JSA sanction for 16/17-year-olds – for certain young people who receive JSA under a Severe Hardship Direction. JSA is not payable for the period of the sanction if they have contributed towards their unemployed status, for example, by leaving employment voluntarily or failing to attend a prescribed training scheme.
- restriction in benefit due to a breach of a community service order, or
- reduction in UC due to a sanction as specified under regulations 100 to 114 of the UC Regulations 2013

Benefit suspensions

HB or UC can be suspended either because there is a general doubt about entitlement or because a claimant has failed to supply information pertinent to their claim. In such cases, a DHP cannot be paid. One of the intentions of the suspension provisions is to act as a lever to ensure that the claimant takes the necessary steps to provide the authority with the required information/evidence - paying a DHP could reduce the effectiveness of this lever.

Rent, when the person is getting Local Council Tax Support but not HB or UC housing element: in other words, when a person is only getting LCTS

Appendix B—Award periods, amounts and phased approach

Award periods and amounts

Please note, the follow is a guide and actual awards and the period of an award may vary depending on individual circumstances:

| Group | Period | Reason | Maximum award |
|--|--|---|--|
| Those approaching pension age and currently affected by the under occupancy reductions. | Up to a maximum of two years before pension date | Once of pension age, the customer is exempt from the under occupancy reductions. It is therefore not cost effective to move them. | Full shortfall between Housing Benefit award and the eligible rent |
| Someone under the age of 35 and renting in the private sector who is currently subject to the Single Room Rent | Up to a maximum of two years before their 35 th Birthday. | As soon as the customer is 35 years old, they will no longer be subject | Shortfall between the Single Room LHA rate and the one bedroom LHA rate. |
| Someone of any age who has a large repayment of a debt that will end shortly. | Up to a maximum of 18 months before the debt is due to end | Once the debt is clear, the customer will have the ability to pay more of their rent. | Each award based on affordability so will vary. |
| Someone on training | Up to a maximum of 12 weeks | Once the training has finished they will be able to find work | Each award based on affordability so will vary. |
| Someone who will be guaranteed an affordable property | The period of time in which a property will be offered, up to a maximum of 52 weeks. | The rent is affordable so DHP's will not be needed. | Each award based on affordability so will vary. |
| Someone with a disability whose home as been significantly adapted. | Maximum of two years | DHP award cannot be indefinite so two years should be sufficient to work with that individual to manage their finances and help their rent become affordable. | Each award based on affordability so will vary. |

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| Households with adults who are unable to share a bedroom due to a disability/condition | Maximum of two years | DHP award cannot be indefinite so two years should be sufficient to work with that individual to manage their finances and help their rent become affordable. | Each award based on affordability so will vary. |
| Persons for whom relocating would prove particularly difficult or detrimental to themselves or to others whom they support. | Maximum of two years | DHP award cannot be indefinite so two years should be sufficient to work with that individual to manage their finances and help their rent become affordable. | Each award based on affordability so will vary. |
| Persons fleeing domestic violence | Maximum of 52 weeks | DHP award cannot be indefinite so one year should be sufficient to work with that individual to manage their finances, help their rent become affordable and to find them suitable accommodation. | Each award based on affordability so will vary. |
| Households with shared parenting, needing bedroom(s) for visiting children | Maximum of 26 weeks | DHP award cannot be indefinite so 26 weeks should be sufficient to work with that individual to manage their finances and help their rent become affordable. | Each award based on affordability so will vary. |
| Those in sheltered accommodation but under pensionable age. | Up to a maximum of two years before pension date. | Once of pension age, the customer is exempt from the under occupancy reductions. It is therefore not cost effective to move them. | Full shortfall between Housing Benefit award and the eligible rent. |

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| Expectant mothers affected by the under occupancy change. | Up to a maximum of nine months or when the baby is born. | Upon birth of the child, an additional room rate may apply therefore HB will increase. | Each award based on affordability so will vary. |
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Phased award

Any award of Discretionary Housing Payments for the first 12 weeks can be awarded for up to a maximum amount of the shortfall calculated, subject to an affordability calculation and any exceptional circumstances that a customer may have.

Any awards that exceed 12 weeks in duration will be tapered to reduce the amount of shortfall that is covered, as follows;

| Period | Maximum award (%) |
|----------------|-------------------|
| 01 to 2 weeks | 100 % |
| 13 to 26 weeks | 75% |
| 27 to 39 weeks | 50% |
| 40 to 52 weeks | 25% |

The above will be used as a guide. If there are exceptional circumstances the DHP officer may use discretion in deciding the period or percentage of an award.

Appendix C – Condition based awards

Discretionary Housing Payments are short term awards to allow people financial reprise while they tackle their real issues, which a view to making them financially independent in the medium to long term. In view of this, to ensure the right support is provided and customers do not repeatedly claim or rely on Discretionary Housing Payments, conditions will be attached to awards. The following describes the conditions attached:

| Reason for DHP award | Condition attached | How it will be monitored |
|---|--|--|
| Moving costs. | Customer must be moving to affordable accommodation where no DHP claim needs to be made. | Checking for any DHP claims at the new address. |
| Reasonable payment of rent arrears to allow the customer to move to affordable accommodation. | New accommodation must be affordable and if downsizing to reduce costs, further DHP support may be required short term. | Checking for any DHP claims at the new address. |
| Rent is too high. | Customer must look to find more affordable accommodation. | Close working with housing and DHP decision makers to ensure customer is doing all they can to find alternative affordable accommodation. |
| Expenditure is too high due to debts. | Customer must agree to work with Luton Access to manage their debts and to create affordable repayment plans. | Close working with the Luton Access to ensure customers have contacted them and are actively working with them to reduce debts. Case management of individuals may be required. |
| Customer has money management issues, unable to prioritise expenditure, manage income etc. | Customer must agree to work with the Luton Access and accept any training offered to allow them to manage their finances better. | Close working with the Luton Access to ensure customers have contacted them and are actively working with them to manage their money better. Case management of individuals may be required. |
| Alcohol, drug and mental health issues. | Customer to seek help, support and advice on their condition via a referral. | Close working with the professional service to ensure they have sought advice and support. |
| Unable to work/ seeking work | Customer must be actively seeking employment and attend any courses available to remove any barriers, i.e. language courses. | Close working with the Luton Access to ensure customers are actively seeking work and removing barriers. Case management of individuals may be required. |

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| Under occupancy reduction in HB. | Customer must be working with housing to seek more suitable accommodation in any sector or looking at ways to ensure they are not under accommodating, i.e. letting out a room. | Close working with housing and DHP decision makers to ensure customer is doing all they can to find alternative affordable accommodation. |
| Benefit <u>cap.</u> | Customers must be working with Housing, Luton Access and/or JCP to seek cheaper accommodation, employment and/or to receive support with debts and money managements. | Closer working with all sectors to chase and check on customers' progress. Case management of some individuals may be required. |

Appendix D – Legal considerations

R v. LB Lambeth, ex parte Gargett

The Court of Appeal's decision in R v. LB Lambeth, ex parte Gargett sets out that any HB already paid towards 'housing costs' must be deducted when calculating the amount of a DHP to avoid duplicate provision.

This case relates to rent arrears and specifically whether a DHP could be used to pay a lump sum towards rent arrears (the Court of Appeal found that a DHP could be used for this purpose).

However, the case also discusses the issue of duplication of DHPs and HB. In relation to preventing duplication of provision, part of the decision states 'housing benefits already paid for past housing costs must also be deducted. This is implicit in the purpose for which DHPs may be made.

Otherwise, the applicant would be receiving DHPs for housing costs that have already been met by past payment of housing benefits. It would not be a case for a need for 'further' financial assistance to meet 'housing costs'.'

The case does not prevent the use of a DHP for rent in advance but indicates that when making such a decision on whether DHP can be used, you may consider whether there is likely to be a duplication of payments for the initial part of the tenancy if the DHP is made and if so, is there any means to avoid this.

If an LA decided that there is no way to avoid a duplication of the payment and the claimant is entitled to a DHP in respect of housing costs (specifically a rent in advance payment), then the LA may still award a DHP.

The DFA regulations require that a DHP can only be considered for a period where the linked HB or relevant award of UC is payable. This is of particular relevance to requests for a period of backdated DHP, since backdating cannot cover arrears accrued while not in receipt of these benefits. The case relates to rent arrears and specifically whether a DHP could be used to pay a lump sum towards past rent arrears.

The Court of Appeal found that there was no restriction within the DFA regulations to prevent an LA from exercising its discretion to make DHP payments for past housing costs (including arrears

of rent) on the basis that the claimant was in receipt of full HB at the time.

R v. Sandwell MBC, ex parte Hardy

When deciding how to treat income from disability-related benefits such as Disability Living Allowance or the Personal Independence Payment, LAs must have regard to the decision of the High Court in R v. Sandwell MBC, ex parte Hardy. This decision places an obligation on LAs to consider each DHP application on a case-by-case basis having regard to each component of the benefit, the purpose of those disability related benefits and whether the money from those benefits has been