

The accessibility of Disabled Facilities Grant application forms in England

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Legal Entitlements & Problem-Solving (LEaP) Project

LEaP is an innovative problem-solving project that helps families of children with brain conditions cope with the legal barriers they face.

We listen to families and help them get the knowledge they need to access health, social care and other support services. We identify the common legal problems that prevent families getting access to services and we develop innovative ways of solving those problems. We aim to reach as many families as we can by sharing our solutions as widely as possible.

School of Law & community engagement

Community engagement is fundamental to the ethos of the School of Law at Leeds University. Students are given every encouragement and support to use their legal skills to benefit of the local community. In doing this students develop these skills and deepen their understanding of the role of the law in the real world: the central role of the law in fostering social justice. In furtherance of this aim the School supports (among other initiatives) a number of law clinics and the Cerebra LEaP project.



Access Committee For Leeds

Information and support through the disabled communities of Leeds

Cerebra Legal Entitlements and Problem-Solving (LEaP): The accessibility of Disabled Facilities Grant application forms

Cerebra & the LEaP Project

In 2014 Cerebra, a unique charity set up to help improve the lives of children with neurological conditions, endowed a research Chair in Law to support disabled children and their families experiencing difficulties in accessing their statutory entitlements to care and support services. The project is now based at the School of Law, Leeds University and the research programme titled the [Legal Entitlements and Problem-Solving \(LEaP\) Project](http://w3.cerebra.org.uk/research/university-of-leeds-cerebra-legal-entitlements-and-problem-solving-project/).

Details of the programme and past research outputs can be accessed at: <http://w3.cerebra.org.uk/research/university-of-leeds-cerebra-legal-entitlements-and-problem-solving-project/>

Both the School of Law and Cerebra receive requests from disabled people and their families for advice and support. Where these requests come within the terms of the Cerebra LEaP Project, they are assessed by the Cerebra in-house research unit and those cases which meet the LEaP eligibility criteria are referred to the Project Team for consideration. We listen to disabled people and their families and help them get the knowledge they need to access health, social care and other support services. We identify the common legal problems that prevent them from getting access to services and we develop innovative ways of solving those problems. A key approach to tackling a commonly occurring problem is to commission research which benefits from the School of Law's excellent student '*pro bono*' researchers. We aim to reach as many disabled people and their families as we can by sharing our solutions as widely as possible.

As well as helping individual disabled people and their families, the Project generates vital information for the wider programme. The research is aimed at improving our understanding of the difficulties faced by disabled people and their families in accessing support services and learning how these problems can be resolved effectively. The team uses the research data (which is held securely and anonymised) to study practical problem-solving techniques and identify which approaches work best, with a view to refining the way we provide advice and disseminate good practice findings for the wider public benefit.

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Summary

Disabled Facilities Grants (DFGs) are grants paid towards the cost of building works which are necessary in order to meet the needs of a disabled occupant. Local housing authorities are responsible for the administration and payment of the grant. The relevant legislation requires that grants be processed within six months of the application and paid no later than 12 months from the date of the application (para 2.03).

- The research appears to be the first that seeks to assess whether DFG application forms are freely available in local authority areas. If a form is not available, local authorities can deny individuals their right to apply for a grant and also stop the 'clock ticking' for the purposes of the statutory timescales.
- The research suggests that almost 50% of local authorities do not make copies of their application forms freely available. As it notes, this is not only frustrating the will of Parliament (para 5.02) it is also frustrating the will of the Government, which has increased significantly the relevant grant to local authorities for DFG awards (para 2.15-2.17);
- The failure to make copies of application forms available also directly contradicts the principal guidance (para 2.09).
- Of the local authorities that do make application forms available, only 7% do this by placing them online (para 4.08).
- Almost three quarters of authorities stated that they accepted applications submitted without their prior agreement (para 4.11). However, on analysis it appears that in only half of the local authority areas would the making of such an application be a realistic option.
- Almost three quarters of authorities confirmed that independent advocacy support was available to enable individuals to complete the application form in their area (para 4.12) although the research was unable to clarify whether this support is available for applications submitted without the prior agreement of the council (para 5.09).
- Given the prevalence of the problem identified by the research it suggests that the Secretary of State should use his powers to ensure that failing local authorities act in accordance with the law and relevant guidance (para 5.11).

1. Introduction

- 1.01 A commonly occurring problem that disabled children and their families encounter concerns difficulties in obtaining support to adapt their homes to make them accessible and safe for all the occupants. This difficulty has been identified by a number of reports¹ and in 2016 was the subject of a specific ‘focus report’ by the local government ombudsman.² Unfortunately, these publications and interventions do not appear to have resolved the problem: indeed, so prevalent have been the requests received by the School of Law and the Cerebra based LEaP team, that in it was decided that this topic should be the subject of a specific ‘problem solving’ research.
- 1.02 Although the legislation concerning the processing and payment of Disabled Facilities Grants is the same in England and Wales,³ the guidance and the central Government funding arrangements are materially different. Given that all the referrals the School of Law and the Cerebra LEaP project received concerned English authorities and the small scale of this study it was decided that the research would be confined to England.
- 1.03 The research we have undertaken has drawn heavily on the expertise and practical support of the Access Committee for Leeds: an independent disabled people’s led organisation that offers peer-support and empowerment to individuals and families who encounter barriers, exclusion and discrimination in all areas of public service and provision.
- 1.04 In 2016 – 17 a predominantly qualitative research study, considered the cost benefits of adaptations (for the public purse). The study suggested that the cost savings for local authorities were considerable – and the final report is freely accessible from the Cerebra website: Luke Clements and Sorcha McCormack [*Disabled Children and the Cost Effectiveness of Home Adaptations & Disabled Facilities Grants: a Small Scale Pilot Study*](#) (Cerebra 2017).⁴
- 1.05 During the 2016-17 research, it became apparent that many families had experienced difficulty in obtaining applications forms to enable them to make their own applications and thereby to bypass delays in council commissioned Occupational Therapist (and associated) assessments.⁵ It was decided therefore that a small follow up research project should be undertaken to ascertain the extent of this difficulty.

¹ See for example, College of Occupational Therapists Specialist Section in Housing Written submission to the House of Commons Women and Equalities Committee Inquiry on Disability and the Built Environment 2016 para 1.2.

² Local government ombudsman *Making a house a home: Local Authorities and disabled adaptations. Focus report: learning lessons from complaints* March 2016.

³ The Housing Grants, Construction and Regeneration Act (HGCRA) 1996.

⁴ Accessible at <http://w3.cerebra.org.uk/research/university-of-leeds-cerebra-legal-entitlements-and-problem-solving-project/student-research-projects/>.

⁵ The withholding of such forms being directly contrary to the practice guidance – see Home Adaptations Consortium *Home adaptations for disabled people: a detailed guide to related legislation, guidance and good practice* (Care & Repair England, 2013).

2. The accessibility of DFG application forms

The legal context

- 2.01 The relevant statutory provision regulating the availability of Disabled Facilities Grants (DFGs) is the Housing Grants, Construction and Regeneration Act (HGCRA) 1996 Part I.⁶
- 2.02 DFGs are grants paid towards the cost of building works which are necessary in order to meet the needs of a disabled occupant. The housing authority is responsible for the administration and payment of the grant.
- 2.03 HGCRA 1996 section 34 requires housing authorities to approve or refuse a grant application as soon as reasonably practicable, and in any event not later than six months after the date of application. By section 36 the actual payment of the grant may be delayed until a date not more than 12 months following the date of the application.

The policy context

- 2.04 In England, about 40,500 DFG awards were made in 2014/15⁷ and during this period the average grant was slightly in excess of £7,000 with almost 60 per cent being under £5,000 (and only five per cent were above the maximum of £30,000).⁸
- 2.05 Guidance in 2006 recognised that the obligation to facilitate adaptations for disabled people extended beyond the mere detail of the specific statutory regime, since the underlying purpose was ‘to modify disabling environments in order to restore or enable independent living, privacy, confidence and dignity for individuals and their families’.⁹
- 2.06 In 2013, good practice guidance in relation to the award of DFGs was published by the Home Adaptations Consortium (HAC): *Home adaptations for disabled people: a detailed guide to related legislation, guidance and good practice*.¹⁰ The consortium’s membership comprises a broad spectrum of national non-governmental organisations – albeit that the guidance states that it is ‘supported by’ the Department of Health and the Department for Communities and Local Government (DCLG).¹¹ This guidance superseded¹² the 2006 guidance.¹³ In the following section these are referred to as the ‘2013 guidance’ and the ‘2006 guidance’ respectively.

⁶ Following text derives from Luke Clements *Community Care and the Law* 6th edition (Legal Action 2017) paras 14.31 – 14.40.

⁷ S Mackintosh and P Leather, *The disabled facilities grant*, Foundations, 2016, para 5.2.

⁸ S Mackintosh and P Leather, *The disabled facilities grant*, Foundations, 2016, para 6.14 and p 6.

⁹ *Delivering housing adaptations for disabled people: a good practice guide*, June 2006, jointly issued by the DCLG, Department for Education and Skills and the Department of Health, at para 1.6.

¹⁰ Published by Care & Repair England, 2013.

¹¹ 2013 HAC guidance, para 1.15.

¹² The 2006 DCLG guidance is shown as ‘withdrawn on 5 February 2015’ on the Government website although it is cited in the 2013 HAC guidance, has been much cited by the local government ombudsman and would appear to be of continuing relevance- see for example complaint No. 15 019 763 against Cornwall Council 4th July 2016.

¹³ DCLG, *Delivering housing adaptations for disabled people: a good practice guide*, June 2006. Paragraph 1.14 explains that it replaces the previous guidance contained in annex I of Department of Environment circular 17/96 annex I and states that it should be read in conjunction with Office of Deputy Prime Minister circular 05/2003 (and, in particular, chapter 4 of that Circular) which is primarily concerned with the impact of the RRO.

Timescales and delay

- 2.07 As noted above, section 36 of the 1996 Act provides the only statutory flexibility local authorities have in the managing of the cost implications of the grant: a grant payable as a consequence of a non-resource dependent duty.¹⁴
- 2.08 Notwithstanding the mandatory nature of this obligation, evidence suggests the process of applying for a grant is often 'slow and cumbersome'¹⁵ with waiting periods in some authorities amounting to 'two or three years'.¹⁶ It also appears that some local authorities adopt extra-statutory impediments to frustrate the expeditious processing of grant applications. These include: not making the application form available until social services have provided specific supporting evidence; waiting lists for applications and approvals; advising applicants that the DFG budget for the year has been spent and to defer making applications until the following year, etc. As the statutory clock only starts ticking once a completed application has been submitted to the housing authority, a not uncommon tactic appears to be to delay the pre-application assessment process, by creating inappropriate administrative hurdles¹⁷ and by delaying the preliminary assessments (for instance, by claiming a shortage of assessors).¹⁸
- 2.09 Since the 1996 Act sets out a statutory timetable triggered by the application, it would appear to be a breach of public law and maladministration for local authorities to adopt extra-statutory policies or practices of these kinds. This point is endorsed by 2013 HAC guidance which stresses that the 6 and 12 month periods are the 'maximum times allowed for these processes rather than the norm'; that a delay of 12 months would be 'exceptional'; and that 'such delays are contrary to the intention of the DFG programme' (para 11.10).¹⁹ In relation to processes designed to delay the making of an application, it states:²⁰

The legislation makes it quite clear that an individual is entitled to complete and lodge a formal application on their own behalf or with the assistance of a third party. Some local authorities prefer to complete applications on the disabled person's behalf or with the assistance of a HIA [Home Improvement Agency]. However any applicant that wishes to complete their own application should be assisted to do so. This should include the provision of application forms, owners/tenants certificates and all relevant information. Local authorities should not in any way attempt to create obstacles to such a process. Once a formal application has been validly made, authorities are under a duty to consider it. An authority could be open to challenge if they were to refuse to entertain a valid application, or to comply with any reasonable request by a potential

¹⁴ *R v Birmingham CC ex p Taj Mohammed* (1997–98) 1 CCLR 441, QBD.

¹⁵ House of Commons Communities and Local Government Committee *Adult social care* Ninth Report of Session 2016–17 HC 1103 (House of Commons, 2017) para 124.

¹⁶ House of Commons Communities and Local Government Committee *Housing for older people* Second Report of Session 2017–19 HC 370 (House of Commons, 2018) para 41.

¹⁷ See e.g. complaint no 02/C/04897 against Morpeth BC and Northumberland CC, 27 November 2003 where the ombudsman criticised a process which required an applicant to queue twice – once for the social services input and then again for the housing authority determination.

¹⁸ Local authorities have previously claimed that a shortage of occupational therapists (OTs) has rendered it impossible for them to undertake timely assessments. In complaint no 90/C/0336, 3 October 1991 the local government ombudsman, in holding that a wait of nine months for an OT assessment amounted to maladministration, observed that if insufficient OTs were available, authorities should find other way of assessing the needs. This advice is reinforced by the 2013 HAC guidance which refers (at para 7.8) to the use of 'other staff' to carry out assessments for minor adaptations and at para 7.14 notes that the HGCRA 1996 'makes no reference to assessment of need for an adaptation' and it refers to advice from the Department for Communities and Local Government 'that an occupational therapy [(OT)] assessment is not a legislative requirement' and that OT assessments should 'not be used in every case'. See also *R (Fay) v Essex CC* [2004] EWHC 879 (Admin) at [28].

¹⁹ In 2007 the local government ombudsman found maladministration where a local authority delayed by four months a financial assessment – see complaint no 05/C/13157 against Leeds City Council, 20 November 2007.

²⁰ annex C para 11 –reiterated at para 7.64.

applicant to be furnished with the necessary application forms.

- 2.10 The failure of local authorities to comply with their statutory duties in relation to the processing and award of DFGs is well documented. A 2015 research report²¹ found that a third had failed to approve DFGs within the statutory period (six months) and that about 4,000 people every year wait longer than they should for a decision – including about 2,500 who wait for over a year for funding – and that almost half of councils had examples of people waiting more than two years for payment.
- 2.11 Evidence of systemic failures in the provision of adaptations (including the processing of DFGs) can be found from the disproportionate number of local government ombudsman reports published concerning this subject. Reports that have not pulled punches – for example, describing council behaviour as ‘appalling’; ‘impenetrable, insensitive and disrespectful’;²² constituting ‘institutionalised indifference’; ‘breath-taking insensitivity’;²³ and which ‘beggars belief’.²⁴
- 2.12 While the courts have not as yet considered the legality of the use by local authorities of rationing mechanisms, this may be due to cases of this nature being settled at an early stage by local authorities. *Qazi v Waltham Forest LBC*²⁵ (a private law claim) concerned such a delaying mechanism and Richards considered that it was ‘plainly arguable that the scheme operated by the [council] was unlawful’ and that had the proceedings been taken as a public law claim (ie by way of judicial review) ‘there must be a good chance that it would have been successful or at the very least that leave would have been granted’.

Council and housing association tenants

- 2.13 Owner-occupiers, as well as tenants and licensees,²⁶ are eligible to apply for DFGs. In practice however many local authorities and housing associations choose to fund adaptations to their properties out of their general housing budget. While this is quite lawful, the 2013 guidance advises that it must not (para 5.21):

result in a worse service to their social tenants than that received by applicants who live in other tenures, or vice versa. This applies to the level of support received, the type of adaptation provided and the time taken to provide a service.

- 2.14 Accordingly any material difference in treatment between social tenants and other tenants (or treatment that falls short of the statutory requirements of the 2006 Act and the 2013 guidance) may constitute maladministration²⁷ as will be a failure by a council to appreciate

²¹ L Cheshire, *The long wait for a home*, 2015.

²² Complaint no 07 C 05809 against Kirklees, 26 June 2008 paras 47 and 50.

²³ Complaint no 07C03887 against Bury MBC, 14 October 2009 paras 40 and 43.

²⁴ Complaint no 07/B/07665 against Luton BC, 10 September 2008 para 37.

²⁵ (1999) 32 HLR. 689, a case based upon an allegation of misfeasance in public office and negligent misstatement.

²⁶ HGCRA 1996 s19(5) extends eligibility for a DFG to a range of licensees, e.g. secure or introductory tenants who are licensees, agricultural workers, and service employees such as publicans.

²⁷ See the report and further report on complaint no 99/B/00012 against North Warwickshire DC, 15 May 2000 and 30 November 2000 respectively.

that housing association tenants are able to apply for a DFG.²⁸ It would follow that local authority and housing association tenants should have access to applications forms in the same way as owner-occupiers and people with other tenures.

DFG core funding

- 2.15 Since their inception, core funding for DFGs has come from the central government although many housing authorities have made additional contributions. Despite research highlighting the increased demand and the cost effectiveness of the grants (discussed below) local authority contributions have reduced since 2010.²⁹ Central government funding now derives from the Better Care Fund (BCF),³⁰ and allocations to this fund for DFGs increased by almost 80% in 2016/17 (to £394m) and will, by 2019/20, amount to £500m.³¹
- 2.16 It appears that this substantial increase is due to the evidence of the cost effectiveness of adaptations, as 2017 Better Care Fund policy guidance³² notes:

There is a growing evidence base on the contribution that housing can make to good health and wellbeing. At a system level, poor housing costs the NHS at least £1.4bn per annum. And there are also costs to local government and social care. On an individual level, suitable housing can help people remain healthier, happier and independent for longer, and support them to perform the activities of daily living that are important to them – washing and dressing, preparing meals, staying in contact with friends and family.

The increase in funding for the Disabled Facilities Grant (DFG) – and the decision to move it into the BCF in 2015-16 – is recognised as an important step in the right direction. Further action to support people into more suitable accommodation

- 2.17 Although the Better Care Fund monies are not ring-fenced, the 2016-17 BCF Strategic Framework³³ stated that the government expected the DFG allocation to be used for this purpose.³⁴ It is unclear if this is happening, for example in 2015 one London Borough was reported as spending only 71% of its allocated funding despite having 900 people on their waiting list.³⁵ In at least one case the evidence suggests that the additional funding³⁶ has not been used in the way intended: the authority appears to have decided to

²⁸ complaint no 09 001 059 against Lewes DC, 6 April 2010.

²⁹ Leonard Cheshire (2015) *The long wait for a home* (Leonard Cheshire) and see S Mackintosh & P Leather (2016) *The Disabled Facilities Grant* (Foundations) page 6.

³⁰ See Department of Health (2014) *Better Care Fund: how it will work in 2015 to 2016 Policy Framework*, para 3.5 and generally see Care & Repair (2015) *Disabled Facilities Grant Funding via Better Care Funds – An Opportunity to Improve Outcomes* (Care & Repair).

³¹ S Mackintosh & P Leather (2016) *The Disabled Facilities Grant* (Foundations) para 3.14 and HM Treasury (2015) *Spending Review and Autumn Statement 2015* Cmd 9162 (HM Treasury) para 1.109.

³² Department of Health & Department for Communities and Local Government (2017) *2017-19 Integration and Better Care Fund Policy Framework* p.12.

³³ Department of Health (2016) *2016/17 Better Care Fund Policy Framework*.

³⁴ Care & Repair England (2016) *Briefing Disabled Facilities Grant* (Care & Repair England).

³⁵ A 2015 report (Leonard Cheshire (2015) *The long wait for a home* (Leonard Cheshire), p.7.) suggested that 37% of councils were not intending to spend any of their BCF allocation on housing related functions. Further research is required to ascertain whether this is indeed the position or if it is due to a misunderstanding relation to the Freedom of Information request which produced this data.

³⁶ DCLG *Integration and better care fund the Disabled Facilities Capital Grant Determination* (2017-18) Annex A 20th April 2017 Grant under section 31(4) Local Government Act 2003.

make ‘an equivalent reduction in the council contribution’³⁷ – so that (in effect) its total DFG budget remained the same as before the additional funding was awarded.

³⁷ Leeds City Council Report of Head of Housing Support Report to Director of Environment and Housing Date: 1 March 2017 para 1.3.

3. Methodology

- 3.01 In October 2017, 11 volunteer undergraduate and postgraduate law students were recruited to undertake the research.
- 3.02 The students were provided with an outline of the relevant law relating to the law and policy concerning the accessibility of Disabled Facilities Grant application forms as well as training concerning the research methodology to be adopted – namely the making of ‘Freedom of Information Requests’ and the project objectives.
- 3.03 A total of 54 local authorities were identified to whom the Freedom of Information Requests were to be made, comprising a geographical mix of English District Councils, Unitary Authorities, London Boroughs and Metropolitan District Councils.
- 3.04 The requests were sent out in December 2017. A total of 43 responses were received by the cut-off date for the study (17th March 2018), one refused on other grounds and 11 did not respond.
- 3.05 The Freedom of Information Request contained six questions. These are detailed in the following section and a copy of the full request can be found in Annex 1 at page 16 below.

4. Responses to the Freedom of information requests

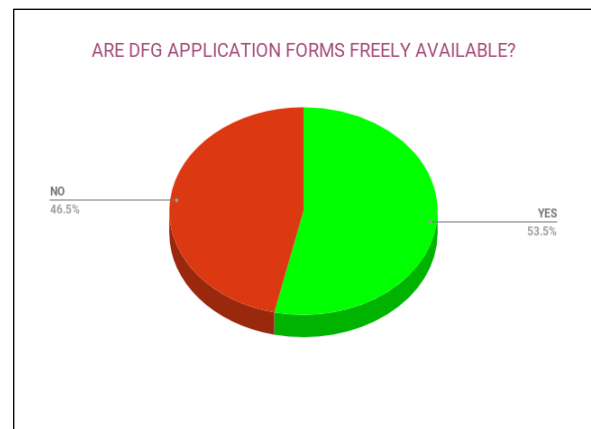
4.01 The Freedom of Information Request contained the following six questions (the full text is at Annex 1 below):

Question 1.

Are copies of your council's application form for a Disabled Facilities Grant freely and unconditionally available to adults' resident in your council's area?

4.02 23 local authorities, ie (53%; n= 43) answered 'yes' to this question (ie confirming that DFG application forms are freely available in their area). Of those who said yes, two mentioned they could be posted if contacted, and two others mentioned that a form is available upon request via email / a telephone call.

4.03 Of the 20 (47%) who answered 'no': 11 mentioned the requirement of an Occupational Therapist's (OT) assessment prior to completing the application form; two mentioned the need for a social care assessment; two said the DFG team would need to be contacted to make arrangements; one suggested a visit from the Home Improvement Agency (HIA) was required in the first instance; and another said that an Adaptation Referral is the trigger for the DFG process.

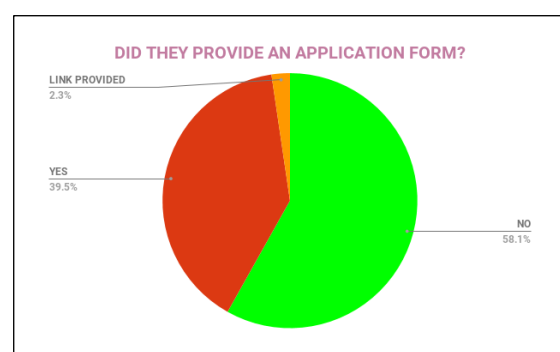


Question 2.

Did the council provide a copy of the application form in response to the FoI request?

4.04 In response to this question 18 (42%) local authorities provided a copy of their application form: 17 electronically and one by way of a hyperlink. 25 (58%) local authorities did not provide a copy.

4.05 Five authorities that had said 'yes', in response to the first question (that DFG application forms were freely available) failed to provide a copy in response to this question.



4.06 One of these authorities stated that the form could be either posted or hand delivered. Four stated that an Occupational Therapist's (OT) assessment would be required in the first instance, comments on this section included that the form could be 'posted out but this should be done after an OT has assessed if the works are necessary' and:

if someone insisted on having a form they would not be refused, however the application would not be processed without the appropriate referral from the OT team.

We have never been in receipt of an "uninvited application" for a DFG. We would accept an application made if it were valid. A Social Service Occupational Therapist would need to be

consulted as to works being “necessary and appropriate” and as the Local Housing Authority the Council would need to ensure the works requested in the application were “reasonable and practical”.

- 4.07 Although outside the scope of the current research it was noted that some of the application forms appeared to require information beyond the strict requirements of the Act. For forms designed to start the ‘legislative clock ticking’ several appeared inappropriately complex and demanding.

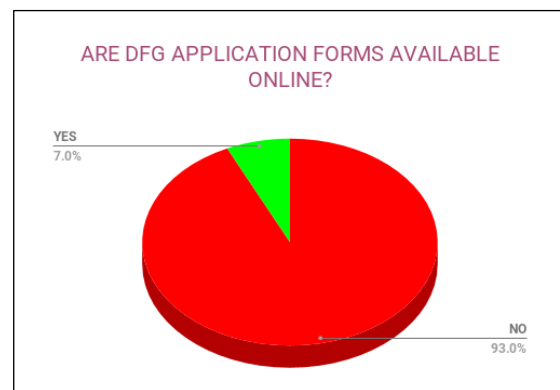
Question 3.

Are Disabled Facilities Grant application forms available online?

- 4.08 In only three authority areas (7%) were DFG application forms available online). 40 authorities (93%) did not provide such access.

- 4.09 In relation to the additional sub-questions:

- 10 authorities indicated that once an OT’s assessment had determined that the works were reasonable and necessary an application form would be available.
- One authority mentioned that if an applicant wished to fill out the form on their own after the assessment, arrangements would be made to accommodate this.
- Other authorities mentioned different types of ‘triggers’ or assessments that are required before the application form would be available including:
- One stated that application forms would be available after an Adult Social Care assessment and another indicated that a visit from a HIA (Home Improvement Agency) was necessary before the application form was available.
- Two stated that they did not provide the forms but could do so ‘if preferred’.
- Another mentioned that the ‘pathways to apply’ were different: referral into Adult Social Care (contact assessment) - specialist OT assessment (needs determined) - then application for grant is made on behalf of the service user.
- One mentioned that the applicant would need to contact the DFG team and another mentioned that the DFG process was triggered by the provision of an ‘Adaption Referral’ and that ‘a Provisional Test of Resources is completed before formal applications are issued’. Another (that had answered ‘no’ to all three questions) stated that ‘DFGs are administered by Care and Repair [name of city]’.
- For those authorities who stated that the form was available, the following gave additional information.
 - One indicated the form was available from the ‘Home Improvement Agency’s website’.
 - One stated that the form could be posted with prior agreement. Another two stated that the form was freely available from a council office ‘provided they are given advance notice’. While three others that said ‘yes’ to office availability, added that an applicant could call/email and a form could be posted out or emailed if requested (one said guidance would be sent with this).



- One said yes to 'freely available' stating that applicants could access paper copies from the disability housing team.
- One stated that due to its length the application form was not available online but that hard copies were available (because it was a proprietary form).
- Two others that had said 'yes' to 'freely available online' and to 'council office' noted that, arrangements could also be made to post or email the form.

Question 4.

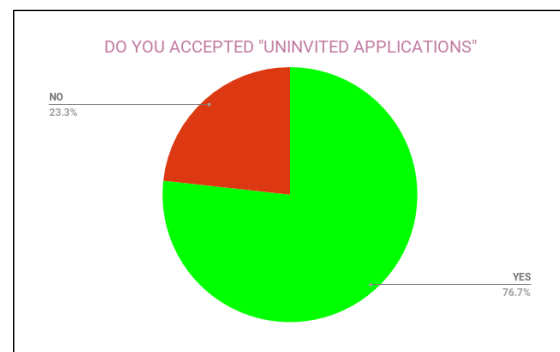
Are Disabled Facilities Grant application forms available from council offices?

- 4.10 Slightly over half of the respondent local authorities (22) stated that DFG application forms were available from their offices compared to those who stated that this was not the case (21).

Question 5.

Does your council accept uninvited DFG applications?

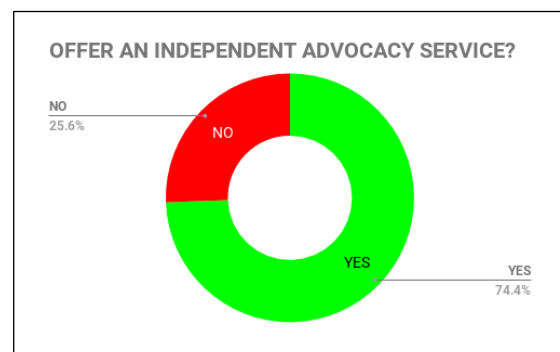
- 4.11 77% (33) of the local authorities stated that they accepted uninvited applications ie applications containing the information required by the 1996 Act but which are submitted without the prior agreement of the council. However 11 of these councils had previously answered 'no' to each of the sub-questions to Question 3 – i.e. as to whether the application form was freely available.



Question 6.

Availability of independent advocacy support?

- 4.12 In response to this question 32 (74%) local authorities stated that independent advocacy support was available in their area to enable individuals to complete the application form in way that ensured that it satisfied the council's requirements for a valid application. 11 (26%) stated that no such support was available.



5. Analysis and conclusions

- 5.01 This research appears to be the first that seeks to assess whether DFG application forms are available in local authority areas. The point is elementary: if a local authority fails to make the form freely available, it can manage demand and ensure that its budget is protected.
- 5.02 The research suggests that almost 50% of local authorities do not make copies of their application forms freely available. In so doing these authorities would appear to be:
- frustrating the will of Parliament – given that: (a) the duty to process and pay a DFG is a non-resource dependent duty: - ie it is a duty that has to be obeyed regardless of the council's financial position (para 2.07 above); and (b) that the Act imposes mandatory time limits on the processing of applications (para 2.03 above);
 - frustrating the will of the Government, which has significantly increased its grant to local authorities with a view to increasing the number of DFG awards (see para 2.15-2.17 above);
 - disregarding practice guidance issued in the name of a principal Government department (para 2.09 above).
- 5.03 Analysis of the local authority responses suggest that in practice application forms may be even more difficult to obtain, since only 42% of the authorities actually provided a copy of their form in response to a direct request that one be sent (para 4.05 – 4.06 above).
- 5.04 On a practical level (i.e. putting to one side the legal duty), if a significant number of local authorities are able to provide copies of their application forms, this would suggest that there is no compelling reason why this cannot be done by all authorities.
- 5.05 Given the clear guidance that 'any applicant that wishes to complete their own application should be assisted to do so [and that this] should include the provision of application forms' (para 2.09 above) it is difficult to understand why so few authorities made their application forms available online (7% - para 4.08 above). One authority suggested that that the forms were 'too long' which appears a questionable reason as does another that, the authority used proprietary forms (para 4.09 above).
- 5.06 77% of authorities (33) stated that they accepted 'uninvited applications' (para 4.11 above), namely applications containing the information required by the 1996 Act but which are submitted without prior agreement of the council. On analysis, however, 11 of these councils had previously answered 'no' to each of the sub-questions to Question 3 – i.e. as to whether the application form was freely available. If an application form is not freely available, it is difficult to see how anyone (other than an expert) could apply for a grant. On this basis, it appears that in only 51% of authorities (22) would the making of an uninvited application be a realistic option for most people (but see paras 5.07-5.09 below).
- 5.07 The making of an application for a DFG is not uncomplicated, requiring special assessments, building cost estimates etc. For almost all households there is going to be a need for expert support to enable the form to be completed. As we note at para 4.07 above, in some areas this may be an even more daunting process, since some of the application forms submitted in response to the Freedom of Information Requests appeared to require information beyond the strict requirements of the Act.

- 5.08 74% of authorities (22) confirmed that independent advocacy support was available to enable individuals to complete the application form 'in way that ensured that it satisfied the council's requirements for a valid application'. This means that this support does not exist in over a quarter of council areas.
- 5.09 An issue that was not addressed by the research, but would benefit from a further study is whether, in reality advocacy support of this kind would be available for uninvited applications. It appears that the terms of reference for many Housing Improvement Agencies (HIAs) may restrict their support role to applications that have been passed to them by their sponsoring local authority.
- 5.10 The research suggests that there is a widespread problem with many local authorities failing to comply with their legal obligations and failing to act in accordance with the relevant guidance. It also notes that the Government has a clear policy of making DFGs more widely available (see para 2.15-2.17 above).
- 5.11 It is unrealistic to expect individual applicants to take individual action against failing authorities to force a change in their behaviour. This would appear to be a case which calls for action by the Secretary of State for Housing, Communities and Local Government. The Government would appear to have a number of mechanisms available, for example through the use of explicit guidance on this question or the attaching of conditions to (or potentially the withholding of) Better Care Funding for DFGs. Regulations could also be issued under section 2(4) of the 1996 Act to provide for a statutory application form.

The Freedom of Information Request

Questions were asked in the following order of priority:

1. Are copies of your council's application form for a Disabled Facilities Grant freely and unconditionally available to adults' resident in your council's area?
2. If the answer to question 1 is Yes, please provide an electronic copy of the application form.
3. If the answer to question 1 above is Yes, can the application form:
 - (a) be downloaded from the councils website? and/ or
 - (b) be obtained by calling at a council office? or
 - (c) if the answer to both (a) and (b) is No – please explain how the application form can be obtained by an adult resident in your council's area?
4. If the answer to question 1 is No, please explain what conditions a potential applicant must satisfy before she or he is able to obtain a copy of the application form.
5. Does your council accept uninvited applications for a Disabled Facilities Grant from adults resident in your council's area? In this context, an 'uninvited application' means an application that contains the requisite information specified in section 2(2) and section 19 of the HGCRA 1996 Act together with the appropriate certificate required by virtue of sections 21 – 22A of the Act and which is submitted without prior agreement of your council.
6. Does your council provide applicants' with independent advocacy support to enable them to complete the application form in way that ensures that it satisfies the council's requirements for a valid application?

Underpinning legal context (DFGs)

Extract of the law – taken from Luke Clements *Community Care and the Law* 6th edition (Legal Action 2017) (14.106 – 14.4116)

HGCRA 1996 s34 requires housing authorities to approve or refuse a grant application as soon as reasonably practicable, and in any event not later than six months after the date of application. By section 36 the actual payment of the grant may be delayed until a date not more than 12 months following the date of the application.

Section 36 provides the only statutory flexibility local authorities have in the managing of the cost implications of the grant: a grant, as noted above, payable as a consequence of a non-resource dependent duty.³⁸ Notwithstanding the mandatory nature of this obligation, evidence suggests that some local authorities adopt extra-statutory impediments to frustrate the expeditious processing of grant applications. These include: not making the application form available until social services have provided specific supporting evidence; waiting lists for applications and approvals; advising applicants that the DFG budget for the year has been spent and so to defer making applications until the following year, etc. Since the statutory clock only starts ticking once a completed application has been submitted to the housing authority, a not uncommon tactic appears to be to delay the pre-application assessment process, by creating inappropriate administrative hurdles³⁹ and by delaying the preliminary assessments (for instance, by claiming a shortage of assessors).⁴⁰

The HGCRA 1996 sets out a statutory timetable triggered by the application. It follows that it would be a breach of public law and maladministration for local authorities to have policies or practices of these kinds. This point is endorsed by 2013 HAC guidance which stresses that the 6 and 12 month periods are the ‘maximum times allowed for these processes rather than the norm’; that a delay of 12 months would be ‘exceptional’; and that ‘such delays are contrary to the intention of the DFG programme’ (para 11.10).⁴¹ In relation to processes designed to delay the making of an application, it states (annex C para 11):

The legislation makes it quite clear that an individual is entitled to complete and lodge a formal application on their own behalf or with the assistance of a third party. Some local authorities prefer to complete applications on the disabled person’s behalf or with the assistance of a HIA [Home Improvement Agency]. However any applicant that wishes to complete their own application should be assisted to do so. This should include the provision of application forms, owners/tenants certificates and all relevant information. Local authorities should not in any way attempt to create obstacles to such a process. Once a formal application has been validly

³⁸ *R v Birmingham CC ex p Taj Mohammed* (1997–98) 1 CCLR 441, QBD.

³⁹ See eg complaint no 02/C/04897 against Morpeth BC and Northumberland CC, 27 November 2003 where the ombudsman criticised a process which required an applicant to queue twice – once for the social services input and then again for the housing authority determination.

⁴⁰ Local authorities have previously claimed that a shortage of occupational therapists (OTs) has rendered it impossible for them to undertake timely assessments. In complaint no 90/C/0336, 3 October 1991 the local government ombudsman, in holding that a wait of nine months for an OT assessment amounted to maladministration, observed that if insufficient OTs were available, authorities should find other way of assessing the needs. This advice is reinforced by the 2013 HAC guidance which refers (at para 7.8) to the use of ‘other staff to carry out assessments for minor adaptations and at para 7.14 notes that the HGCRA 1996 ‘makes no reference to assessment of need for an adaptation’ and it refers to advice from the Department for Communities and Local Government ‘that an occupational therapy [(OT)] assessment is not a legislative requirement’ and that OT assessments should ‘not be used in every case’. See also *R (Fay) v Essex CC* [2004] EWHC 879 (Admin) at [28].

⁴¹ In 2007 the local government ombudsman found maladministration where a local authority delayed by four months a financial assessment – see complaint no 05/C/13157 against Leeds City Council, 20 November 2007.

made, authorities are under a duty to consider it. An authority could be open to challenge if they were to refuse to entertain a valid application, or to comply with any reasonable request by a potential applicant to be furnished with the necessary application forms.

The 2006 DCLG and 2013 HAC guidance provide target timescales for the completion of the various stages of the DFG process and the local government ombudsman has placed considerable reliance in these⁴² – for example, that for a grant of £5,000, there should be a maximum target time of 52 weeks from the initial enquiry about services to completion of adaptations work; and that even in complex assessments, the time from referral to the completion of an occupational therapist's report should not exceed three months.⁴³

The target timescales in the 2013 HAC guidance are less detailed than those in the 2006 DCLG guidance, but are valuable nevertheless. Local authorities should provide 95 per cent of adaptations within the timescales detailed above (in Table 14.1).

The expectation is therefore that all adaptations will be completed within 30 weeks of the initial enquiry (ie not the completion of the application) and urgent adaptations should be completed within 11 weeks of the initial enquiry. Given the statutory 'maximum' of 52 weeks and the increased funding for DFGs these would appear to be not unreasonable.

While the courts have not as yet been called upon to consider the legality of the widespread use by local authorities of rationing mechanisms,⁴⁴ this may be due to cases of this nature being settled at an early stage by local authorities. In *Qazi v Waltham Forest LBC*⁴⁵ Richards J dismissed a private law claim which alleged that the authority had deliberately delayed the processing of grant applications and failed to explain clearly the status of applications – namely that they were not 'pending applications' (to which the mandatory timescales in the Act applied) but merely 'enquiries'. While the judgment addressed the specific private law issues in the case, the judge observed that 'it is plainly arguable that the scheme operated by the defendant was unlawful' and that:

Notwithstanding the difficulties that the 1989 Act⁴⁶ created for local authorities, with their limited resources, I confess to a degree of surprise that systems of this kind received approval in principle, as I am told, from the Local Government Commissioner. Had an application been made at the time to challenge the system by way of judicial review, there must be a good chance that it would have been successful or at the very least that leave would have been granted.

Where hardship is being caused by the delayed processing of a grant, social services authorities should be pressed to facilitate the works via their underpinning duties under Care Act 2014 / Children Act 1989 and, if it be the case, requiring that the works be completed urgently and without the delay occasioned by a full social care assessment).

Where the maladministration (for example, delay in implementing adaptations or in failing to honour promises to take action) is attributable to a social housing provider and not a local

⁴² Complaint no 07/A/11108 against Surrey CC, 11 November 2008, para 10; and see eg Complaint no 06/C/16349 against Sheffield City Council, 26 June 2008 para 46; See eg Complaint no 07/C/01269 against Lincoln CC and 07/C/09724 against West Lindsey DC, 14 October 2009; Complaint no 07C03887 against Bury MBC, 14 October 2009; Complaint no 15 019 763 against Cornwall Council, 4 July 2016; Complaint no 16 001 198 against Barking & Dagenham LBC, 1 July 2016; and Local Government Ombudsman, *Making a house a home: local authorities and disabled adaptations: focus report: learning lessons from complaints*, 2016 at p4.

⁴³ Complaint no 07/A/11108 against Surrey CC, 11 November 2008.

⁴⁴ Research suggests that a third of local authorities routinely breach the legal timescales affecting over 4,000 people every year – see L Cheshire, *The long wait for a home*, 2015.

⁴⁵ (1999) 32 HLR. 689, a case based upon an allegation of misfeasance in public office and negligent misstatement.

⁴⁶ The case concerned the Local Government and Housing Act 1989 under which DFGs were payable at the time. The material parts of the Act are now found in the 1996 Act.

authority, then it may be possible to complain to the housing ombudsman service.⁴⁷ The housing ombudsman is able to undertake investigations and to make compensation recommendations in much the same way as the local government ombudsman.⁴⁸

Assistance and support for applicants

A DFG grant can cover not only the building works but also other charges necessarily incurred in undertaking the grant-aided works, including costs such as architects' and surveyors' fees and charges for planning permission or building regulations approvals.⁴⁹ As a consequence, the housing authority is responsible for supporting the applicant through the process, including ensuring that plans and the completed the works are fit for purpose. As the 2013 HAC guidance advises (para 1.9):

Quality and choice should be the shared and corporate goals of all partners in the delivery of an adaptations service. A corporate responsibility, binding on all partners, will ensure that the adaptation is delivered sensitively, is fit for the purpose identified by the end user and within a specified time-frame.

It follows that authorities must intervene to challenge undue delays in obtaining building regulation approval or clarifying the need for planning permission.⁵⁰ A number of ombudsman reports have also concerned the failure of councils to ensure that the adaptations were suitable and the building work of a sufficient quality⁵¹

⁴⁷ Housing Ombudsman Service Housing Ombudsman Service, Exchange Tower, Harbour Exchange Square, London, E14 9GE.

⁴⁸ See e.g. complaint reference 200901278 – Adaptations, Repairs, 30 July 2010 – a complaint that involved delayed adaptations and where the ombudsman awarded compensation for the social landlord's failure to communicate, lack of co-ordination and the lack of timeliness in completing the work.

⁴⁹ Housing Renewal Grants (Services and Charges) Order 1996 SI No 2889; and 2013 HAC guidance, para 37.

⁵⁰ Complaint no 12 021 104 against Sandwell MBC, 30 January 2014.

⁵¹ See, for example, the case described in the Local Government Ombudsman, *Making a house a home: local authorities and disabled adaptations: focus report: learning lessons from complaints*, 2016, p8.