

# CABINET

## DISCRETIONARY HOUSING PAYMENTS POLICY (IN RELATION TO HOUSING BENEFIT)

- including, as context, a feasibility study of reclassifying council housing properties under new size criteria rules

23 April 2013

### Report of Head of Resources

PURPOSE OF REPORT				
This report seeks approval to update the existing Discretionary Housing Payment (“DHP”) Policy to reflect welfare reform changes in place from 1 April 2013, including the abolition of Council Tax Benefit, size criteria in social sector housing (the “bedroom tax”) and the future benefit cap. As context, the report also considers the feasibility of reclassifying council housing properties where additional rooms are currently not used as bedrooms, further to the recent motion considered by Council.				
Key Decision	<input checked="" type="checkbox"/>	Non-Key Decision	<input type="checkbox"/>	Referral from Cabinet Member
Date of notice of forthcoming key decision	25 March 2013			
This report is public.				

#### RECOMMENDATIONS OF COUNCILLOR BRYNING:

That the revised Discretionary Housing Payment Policy in relation to housing benefit be approved as set out at Appendix A, to take effect from 01 April 2013.

#### RECOMMENDATIONS OF OFFICERS:

That it be noted that in context of the new size criteria rules, there is no case to reclassify or remodel council housing properties where additional rooms are currently not used as bedrooms.

#### 1 INTRODUCTION

- 1.1 The Council has discretion to provide additional financial assistance in the form of a Discretionary Housing Payment (“DHP”) to any customer claiming housing benefit, when it considers that additional help with housing costs is needed.

- 1.2 Housing costs are defined as rent, but DHPs can also be used to assist customers claiming housing benefit to secure a new tenancy, by means of rent in advance, deposits or moving costs.
- 1.3 This report seeks approval to update the existing Discretionary Housing Payments policy, which sets out how the Council will operate the DHP scheme from April 2013 and the criteria that must be satisfied in considering applications. The new policy is attached as **Appendix A**.
- 1.4 The size criteria in social sector housing ("bedroom tax") have an impact on council tenants. At Council on the 27 February 2013 it was resolved that a report should be brought to Cabinet on the feasibility of reclassifying properties where additional rooms are currently not used as bedrooms. The feasibility is considered in this report.

## 2 BACKGROUND INFORMATION

- 2.1 Housing Benefit is a national welfare benefit scheme that helps people on low incomes pay rent for the home they live in. Since the award is means tested, however, there is often a shortfall in the amount of Housing Benefit given in relation to rental liability.
- 2.2 The DHP scheme has been in operation for the past 10 years. It enables Councils to pay, at its discretion, additional money towards housing costs in addition to Housing Benefit, where a customer has unusual or extreme circumstances that are causing hardship, or mean that they are at risk of becoming homeless.
- 2.3 The scheme sits outside the normal Housing Benefit scheme and payments are made at the Council's discretion. Applications are considered by a DHP Panel, made up of senior management representatives from Benefits, Welfare Benefits and Housing Advice.
- 2.4 For 2013/214 Lancaster has been awarded DHP funding of £211,058, plus £24,294 to support the costs of implementing welfare reform changes (including software changes). This compares with total funding of £91,619 for the previous year. The increase of around £119K is to help the Council manage the impact of Housing Benefit reforms (including social sector size criteria, the benefit cap and Universal Credit).
- 2.5 From 01 April 2013 DHP cannot be used to pay Council Tax. The new policy also provides minor amendments to remove any reference to Council Tax Benefit.
- 2.6 The level of a DHP cannot exceed the shortfall between the rent charged and the amount of housing benefit paid. The Department for works & Pensions ("DWP") criteria to be met before considering a payment is that the customer is entitled to:
- Housing Benefit, or
  - Universal Credit, and
  - has a rental liability, and
  - requires further financial assistance with Housing costs (to reduce rent arrears or prevent rent arrears that could arise).
- 2.7 Recent case law and pending legislation in relation to the introduction of size criteria in the social rented sector (under occupancy rules) indicates that certain categories of customers will *not* now suffer a reduction in benefit:
- Customers with disabled children who would normally require their own bedroom and cannot be expected to share a room.
  - Foster parents will now be allowed a room in respect of foster children, including for periods when they don't actually have a placement.

- Armed forces adult children living at home will continue to be allowed a bedroom in the household count, whilst they are stationed away from home.

2.8 Any further legislative or regulatory amendments would be reflected in the administration of the policy.

### **3 FURTHER CONTEXT: SIZE CRITERIA IN SOCIAL HOUSING**

3.1 The Government, through the size criteria in social sector housing (bedroom tax), has introduced measures that apply to tenants of working age that will restrict housing benefit if they are deemed to have a spare bedroom in their council or housing association home.

3.2 Council has asked Cabinet to consider the feasibility of reclassifying council housing properties where additional rooms are currently not used as bedrooms, and a number of factors need to be considered.

3.3 The Council was required to have the number of bedrooms in its properties independently verified as part of the process leading up to the self financing arrangement put in place by the Government. Each individual property was certified, by independent surveyors. This validation was applied to the council housing asset register in April 2011.

3.4 As a consequence, the Council has an accurate and audited asset record for all its council housing properties. The numbers of bedrooms in each property are correctly identified and are let accordingly. Furthermore, the Council still has demand for all types of properties.

3.5 Some social landlords are currently facing the position where the demand for their properties is virtually non-existent, however. Where there has been a reassessment of housing demand this may lead to remodelling of the housing stock, including remodelling, acquisition, and demolition. There has been the widely reported case where Knowsley Housing Trust is remodelling and re-designating two and three-bedroom flats and maisonettes where demand has disappeared, and they have taken the decision to let these properties to single people and couples without children. In taking the decision to reclassify these properties Knowsley have estimated that it will cost them £250,000 a year in lost rental income.

3.6 As part of the Council's asset management the sustainability of the Council's housing stock is kept under review, taking into account many factors including changing demographics, local demand, and future investment and maintenance needs. As has been previously indicated the Council still has demand for all types of properties. Given the demand for all types of accommodation across all property types, the remodelling and re-designation of council properties would be inappropriate and would diminish the Council's ability to rehouse across all needs.

3.7 It should also be noted that the formula for calculating council housing rents takes into account the number of bedrooms in a property, and any variation in the make up of the council housing stock would have a financial impact on the HRA budget, and on the 30 year HRA business plan.

3.8 For these reasons, there is no case for remodelling or reclassifying council housing properties and Cabinet is requested to note this position.

### **4 DETAILS OF CONSULTATION**

4.1 No specific consultation has taken place.

## 5 OPTIONS AND OPTIONS ANALYSIS (including risk assessment)

5.1 With regard to the feasibility work, no alternative options are put forward. To meet existing housing demand there is no scope to remodel or reclassify council properties similar to that undertaken by Knowsley Housing Trust. The Council's council housing stock is kept under review through asset management to ensure that it is managed appropriately and remains viable, and there is no justification for reclassification of the bedroom numbers within the council's housing stock at this time.

5.2 With regard to the proposed policy, the basic options are to approve it as set out at **Appendix A**, or to require amendments.

5.3 The existing DHP policy is working well but there have been recent welfare reforms that have resulted in the need for a policy update. The proposed policy has now been adopted by Preston City Council and whilst (given the shared service) it is advantageous operationally for both Councils to have the same policy, there is no requirement to do so.

### 5.4 Risk Considerations attached to the Proposed Policy

5.4.1 In relation to DHP, it is anticipated that applications will exceed available resources but spend will be carefully managed to mitigate any risk to the Council, with issues flagged up to members at an early stage should the fund be likely to encounter financial strain.

5.4.2 Indicative applications for DHPs in 2013/14 could be in the region of £287K, made up as follows:

- Existing demand on the fund = £67K (assume constant)
- Size criteria in the Social Sector = £120K
- Benefit Cap = £100K

5.4.3 In the Lancaster area 834 residents are likely to be affected by the under occupancy rules (681 by 14% and 153 by 25%). The difference between the rent charged and the rent for benefit purposes following a % deduction totals £11K per week, providing an annual shortfall to Registered Social Landlords of £572K – which represents the additional amount of rent now collectable from tenants.

5.4.4 Early indications suggest that approx. 58% of these cases involve families receiving additional income disregarded for Housing Benefit purposes. i.e. Disability Living Allowance or Child Benefit. In these cases, the customer may have the finances to cover the reduction in their housing benefit award.

5.4.5 For those individuals who have no additional finances (approx. 350) full support to pay their shortfall in rent could create a financial strain of approx. £240K on the DHP fund. For these purposes it is assumed that 50% of customers will apply for assistance (£120K).

5.4.6 The Benefit Cap is due to be introduced from July 2013. A recent DWP scan identified 41 customers who will be affected by this cap, providing a shortfall in rent of £2.5K per week, resulting in an annual impact in 2013/14 of approx. £100K.

## 6 OFFICER PREFERRED OPTION AND COMMENTS

6.1 To approve the policy as set out. There have been legislative and procedural guidance changes since the DHP policy was last reviewed, which requires considered amendment to the existing policy.

6.2 In the current circumstances it is not feasible to reclassify properties where additional rooms are currently not used as bedrooms.

**RELATIONSHIP TO POLICY FRAMEWORK**

The intention to protect the most vulnerable in our society runs through the Council's proposed Corporate Plan, as reflected elsewhere on the agenda.

**CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

The Council recognises the need for proactive work and support to try and mitigate as much as possible the effect of these welfare reform changes on vulnerable residents in Lancaster.

The Benefits Section works with colleagues from other services (Council Housing in particular) and agencies to provide a full and comprehensive approach to all its customers on housing and money management issues.

**FINANCIAL IMPLICATIONS**

The budget for DHPs comprises of ring fenced funding from DWP of £211,058 (lower threshold) and the 2013/14 income and expenditure budgets have been updated to reflect this. A higher threshold of £527,645 is also provided by DWP. Anything paid between the lower and higher threshold must be funded by the local authority. Payment above the higher threshold is prohibited.

As background, at the time of writing this report, in last financial year 162 applications for DHP were successful, amounting to awards totalling £67K. 90 applications have been refused and 13 applications have lapsed due to the customer failing to contact or provide requested information.

With a wealth of expertise and local knowledge The DHP Panel expect to manage the increased demand for assistance from this scheme within the increased budget available for 2013/14.

A quarterly report will be provided to the Portfolio Holder on expenditure to date.

**SECTION 151 OFFICER'S COMMENTS**

This report has been produced on behalf of the Section 151 Officer and she has no further comments to add.

**LEGAL IMPLICATIONS**

DHP awards are made under the provisions set out in the Discretionary Financial Assistance Regulations 2001. These regulations require local authorities to administer a DHP scheme.

Although the legislation provides the local authority with a broad discretion, decisions must be made in accordance with ordinary principles of good decision making. In particular, the Council has a duty to act fairly, reasonably and consistently.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and has no further comments.

**BACKGROUND PAPERS**

None.

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# **Preston and Lancaster City Councils - Shared Service**

## **Housing Benefit**

### **Discretionary Housing Payments Policy**

## **Introduction**

Sections 69 & 70 of the Child Support, Pensions and Social Security Act 2000 provide for a system of discretionary housing payments (DHPs) to be devised and for subsidy limits to be imposed on those payments. The regulations covering DHPs are The Discretionary Financial Assistance Regulations 2001.

DHPs are not payments of benefit and are outside of the Housing Benefit regulations.

The scheme is discretionary and the local authority will not prescribe any conditions that need to be satisfied outside of the legal framework. To prescribe such conditions would fetter the local authorities' discretion and could lead to legal challenge. Each case will be considered on its own merits.

This policy ensures that the local authority will act fairly, reasonably, and consistently throughout the DHP decision-making process. All customers will be treated with due courtesy and respect and in accordance with the Council's policies.

The local authority aims to maximise benefit entitlement for all its customers. It is recognised that DHPs are not intended as long term solutions to housing and money management issues and that only by working jointly with colleagues from other services and agencies can we provide a full and comprehensive approach for our customers.

This policy is not intended to define specific situations when we will or will not make a discretionary payment; to do so would make the policy too rigid and may prevent payments being made where there are exceptional or unusual circumstances. Payments are expected to be made to meet current needs rather than past debts.

## **DHP Awards**

The Discretionary Housing Payment (DHP) scheme allows local authorities to provide discretionary financial assistance to customers claiming Housing Benefit when they consider that additional help with housing costs is needed. Housing costs are defined as rent.

DHP can also be used to assist customers claiming Housing Benefit to secure a new tenancy; by means of rent in advance, deposit or moving costs.

In addition, Discretionary Housing Payments can be used to provide support to customers affected by some of the key welfare reforms including:

- Reductions in Housing Benefit where the Benefit Cap has been applied.
- Reductions in Housing Benefit for under-occupation in the social rented sector.
- Reductions in Housing Benefit as a result of Local Housing Allowance restrictions to the shared room rate for those customers who have not reached 35 years.

The Council will administer the award of Discretionary Housing Payments to:

- help alleviate poverty;

- encourage and help sustain the Authority's residents in employment;
- help those who are trying to help themselves;
- help keep families together;
- help prevent child poverty;
- support the vulnerable in the local community;
- help customers through a personal crisis / difficult even;
- support households that are returning to work after a period of unemployment and provide assistance in the managing of their finances during the transition from coming off benefit and receiving wages / securing Working Tax Credit entitlement;
- support those who are in affordable housing but at risk of becoming homeless due to being unable to meet their full rent liability due to severe financial difficulties from the effects of the current economic climate;
- support those who are in affordable housing but require extra assistance to remain in their home where it has been adapted for their disablement needs;
- support those who are in affordable housing but require extra assistance because they need an additional room as they are foster carers.

The Council will consider making a payment of a Discretionary Housing Payment to claimants who meet the qualifying criteria subject to budget limitations. Before making an award the authority must be satisfied that the customer is entitled to Housing Benefit and requires further financial assistance with housing costs.

DHPs are excluded from the rights of Appeal to an Appeals Tribunal. However, a DHP claimant can request that the panel look at the decision again within 14 days of the date of the decision. Ideally, the claimant should provide fresh information and evidence to support the claim.

## **DHP Panel**

Preston City Council and Lancaster City Council will each have their own DHP panel to consider the claims.

Generally claims will be considered by the panel. However, full responsibility for the decision to award payments, recording and making those payments and the legality of payment will remain with the Assessment Manager at each local authority.

However, DHP claims for deposits, rent in advance and moving costs may be considered by a senior officer of the Benefits Team where a decision is needed urgently.

### **Preston City Council**

The DHP panel comprises of three services within Preston City Council:-



- Revenues (Housing Benefits and Council Tax Support)
- Housing Advice and
- Welfare Benefits

Senior Officers from each of these services will meet on a fortnightly basis to consider all claims and wherever necessary offer assistance from their own particular areas of expertise. These will incorporate a full benefit entitlement check, housing advice and homelessness issues, a welfare benefits check and debt / budgetary advice and assistance.

### **Lancaster City Council**

The DHP panel comprises of representatives from two services and two statutory/voluntary agencies; currently consisting of representatives from:

- Revenues (Housing and Council Tax Benefits);
- Strategic Housing
- Lancashire Care NHS
- Citizens Advice Bureau

The representatives will meet on a fortnightly basis to consider all claims and wherever necessary offer assistance from their own particular areas of expertise and signpost customers to other agencies where applicable.

### **Administration of DHP claims**

In accordance with the legislative requirements of the scheme, local authorities are responsible for the determination and award of claims.

The Benefit Teams in Revenue Services will administer the DHP scheme and will:

- Provide a specified claim form for the purpose of claiming a DHP. Claims may be accepted by other means such as by telephone and by personal visit.
- Identify potential DHP claimants from records held and invite a claim accordingly. This is in addition to normal take up activity.
- Provide training and procedural notes to relevant members of staff.
- Pay awards of DHPs via the Housing Benefit payment system and within the relevant payment cycles.
- Notify a person claiming a DHP payment of the outcome of his/her application in writing stating the reason/s for the decision and providing details of dispute rights.
- Inform a person claiming a DHP of their duty to notify the Council of relevant changes of circumstances.
- Review a DHP award at the same time as entitlement to Housing Benefit is reviewed.
- Recover overpaid DHP dependent on the circumstances that gave rise to the overpayment.
- Periodically review the DHP claim process for effectiveness and efficiency.

## **Financial implications**

Payment is limited and local authorities are advised of their threshold limits on an annual basis.

Payment up to the lower threshold can be claimed back from Central Government in the same way as normal benefit subsidy. Anything paid between the lower and higher threshold levels must be funded by the local authority and payment above the higher threshold is prohibited.

When used for additional help with on-going housing costs the level of a DHP award cannot exceed the shortfall between rent charged and Housing Benefit paid. There are also elements of a person's rent and shortfalls in benefit that cannot be met by a DHP and these are prescribed by regulations.

## **Monitoring and reporting**

The Assessment Manager will complete statistical returns as required (Initial Estimate, Mid-year Estimate and Final Subsidy claims) which need to be authorised by the responsible S151 Officer for each authority.

In addition, the Assessments Manager will prepare and submit to the panel on a monthly basis, details of the current expenditure and a forecast of expected expenditure to the end of each financial year.

A quarterly report will also be prepared for the portfolio holder in each authority.