

**DISCRETIONARY HOUSING PAYMENTS POLICY UPDATE**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 In March 2013 Council approved a policy for awarding Discretionary Housing Payments (DHP) to claimants in receipt of Housing Benefit (HB) and who are deemed to be in high, medium or low levels of hardship. The policy was updated in August 2014 in line with direction from the Scottish Government to allow DHPs to be paid to all under-occupancy cases irrespective of whether they would otherwise be considered as high, medium or low priority and for this change to be backdated to 1 April 2014. All other cases continue to be subject to an assessment of hardship which includes a financial assessment.
- 1.2 There is now a need to update the policy again following a decision made in the High Court in England, Hardy, R (on the application of) v Sandwell Metropolitan Borough Council [2015] EWHC 890 (Admin) (30 March 2015) that has an impact on the way we assess DHP claims for those in receipt of Disability Living Allowance (DLA).
- 1.3 Additionally, experience has shown that the policy needs to be tighter in respect of payments made to claimants in respect of rent deposits or rent payments in advance in order to ensure that such support does not encourage a claimant to move to a property which they are unable to afford on an ongoing basis.
- 1.4 The committee is asked to approve the proposed amendments to the DHP policy which address these two concerns.

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### **2.0 INTRODUCTION**

- 2.1 In March 2013 Council approved a policy for awarding Discretionary Housing Payments (DHP) to claimants in receipt of Housing Benefit (HB) and who are deemed to be in high, medium or low levels of hardship. The policy was updated in August 2014 to allow DHPs to be paid to all under-occupancy cases irrespective of whether they would otherwise be considered as high, medium or low priority and for this change to be backdated to 1 April 2014.
- 2.2 There is now a need to update the policy following a decision made in the High Court in England, Hardy, R (on the application of) v Sandwell Metropolitan Borough Council [2015] EWHC 890 (Admin) (30 March 2015) that has an impact on the way we assess DHP claims for those in receipt of Disability Living Allowance (DLA).
- 2.3 Additionally, experience has shown that the policy needs to be tighter in respect of payments made to claimants in respect of rent deposits or rent payments in advance in order to ensure that such support does not encourage a claimant to move to a property which they are unable to afford on an ongoing basis.

### **3.0 RECOMMENDATIONS**

- 3.1 Policy & Resources Committee approves the proposed amendment to the policy for awarding DHP attached at Appendix 1.

### **4.0 DETAIL**

- 4.1 In March 2013 Council approved a policy for awarding Discretionary Housing Payments (DHP) to claimants in receipt of Housing Benefit (HB) and who are deemed to be in high, medium or low levels of hardship. The policy was updated in August 2014 to allow DHPs to be paid to all under-occupancy cases irrespective of whether they would otherwise be considered as high, medium or low priority and for this change to be backdated to 1 April 2014. This followed a letter from Margaret Burgess, Minister for Housing and Welfare to local authority Chief Executives on 28 March 2014 about the measures that the Scottish Government is taking to mitigate under-occupancy restrictions in the social rented sector in 2014/15.
- 4.2 The Scottish Government has provided additional resources of £65,991 in 2015/2016 and a further award is expected soon to help mitigate the impact of under-occupancy provisions in the social rented sector. These monies, on top of £138,368 carried forward from 2014/2015, will be used to continue to award DHP to a similar range of cases as supported in 2014/15. On a monthly basis, the SMT considers what priority of cases we can afford to support based on budget available, and are currently supporting medium and high priority cases. It is hoped to support this priority throughout 2015/16 in the same way as we supported such cases in 2014/15.

- 4.3 There is now a need to update the policy to reflect a decision made in the High Court in England, *Hardy, R (on the application of) v Sandwell Metropolitan Borough Council* [2015] EWHC 890 (Admin) (30 March 2015) that has an impact on the way we assess DHP claims for those in receipt of Disability Living Allowance (DLA).
- 4.4 The decision relates specifically to the way in which the income and expenditure of a claimant who is in receipt of the care component of DLA is assessed in relation to determining the level of hardship that a claimant is facing. In the High Court case, the claimant was aggrieved that Sandwell Metropolitan Borough Council (SMBC) had not disregarded his income from the care component of DLA when assessing his claim for DHP. This income is paid to disabled claimants in order to allow them to pay for the care that they need to support them to live with their disability. The high court decision effectively states that this is not lawful and that DLA income should be disregarded for this purpose.
- 4.5 Our practice, as at SMBC and 75% of other local authority policies, was to include the care component of DLA as income, and also include the expenditure associated with it, such as care costs. The issue arises when a claimant does not use DLA income specifically to purchase care because they rely on friends and family. They therefore were deemed to have excess income over expenditure which could go to cover any shortfall in housing costs. This outcome was deemed discriminatory as the DLA income was purely intended to assist with disability and should not be used for housing costs.
- 4.6 The Council's practice has been changed immediately following the SMBC case. The proposed amendment to the policy is to reflect this revised practice and to specify that we will disregard the income for the care component of DLA and also disregard any additional expenditure incurred by the claimant in relation to their disability. This would bring the policy into line with the High Court decision.
- 4.7 The impact of this decision means that the budget for DHP is under more pressure. There is still uncertainty as to the totality of funding available for 2015/16, and as we have to support more disabled cases in future as explained above, SMT reviewed the priority for cases which we are able to support in April 2015 and agreed to amend the definition of medium hardship. This was set as an excess of income over essential expenditure from September 2013 to February 2014 of £30 (single), £60 (couple) and £90 (family). In March 2014 it was widened, as we were underspending at that time, to £40 (single), £80 (couple) and £120 (family). In April 2015 SMT revised this down to £30 (single), £50 (couple of family of 2), and £80 (family of 3 or more). This recognised the additional budgetary pressures and that many expenses do not increase proportionately for a larger household.
- 4.8 It is also proposed to clarify the policy in respect of payment of DHP to cover rent in advance and rent deposits. There is a need to clarify the policy to ensure that DHP is not paid which would encourage a claimant to move to a property which they are unable to afford on an ongoing basis. The wording in the policy has been tightened to avoid this and to reduce the risk of challenge in any such cases.

## **5.0 CONCLUSIONS**

- 5.1 This paper asks Policy & Resources Committee to approve the updating of the DHP policy to disregard the care component of DLA in the assessment of financial hardship to reflect the practice in place since April 2015 as a result of the SMBC case. The other proposed amendment to the policy is to tighten the rules in relation to applying for DHP for rent in advance and rent deposits in respect of future applications.

## **6.0 IMPLICATIONS**

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|-----|-------------------|---|
| 6.1 | Policy:           | This proposes a change to the policy for awarding DHP.  |
| 6.2 | Financial:        | More DHP will be paid to disabled claimants following the SMBC case.  |
| 6.3 | Legal:            | Proposals are in accordance with high court case Hardy, R (on the application of) v Sandwell Metropolitan Borough Council [2015] EWHC 890 (Admin) (30 March 2015) |
| 6.4 | HR:               | None  |
| 6.5 | Equalities:       | Disabled claimants in receipt of DLA care component will receive more awards of DHP. Less money will be available for tenants in the private rented sector.       |
| 6.6 | Risk:             | Policy clarification reduces risk of challenge from claimants.  |
| 6.7 | Customer Service: | None.   |

### **Appendices:**

- 1 Proposed changes to DHP policy

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**12 August 2015**

### **Policy Lead: Councillor Dick Walsh**

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### Background papers

Welfare Reform: Council 21 March 2013

Discretionary Housing Payments Policy: Policy & Resources Committee 21 August 2014

## **Appendix 1: proposed changes to DHP Policy**

### Section 7.1 THE HOUSEHOLD'S FINANCIAL CIRCUMSTANCES

Replace the paragraph immediately after Table 1 with the following:

Income from Disability Living Allowance (DLA) / Personal Independence Payments (PIP) Mobility Component and Care Component and related expenditure will be disregarded for the purpose of the financial assessment.”

### Section 8.0 WHAT DHP CAN AND CANNOT COVER

Insert after “Alternatively, anyone homeless or threatened with homelessness under current legislation and who is in housing need can apply to the council for a rent deposit guarantee.” The following:

“An award of DHP for a rent deposit will not be made in addition to support provided through the rent deposit guarantee scheme.

When awarding DHPs for a rent deposit or rent in advance, the Council will only make an award when it is satisfied that:

1. The property is affordable for the tenant;
2. the tenant has a valid reason to move; and
3. the deposit or rent in advance is reasonable.

The Council will take into account any circumstances where a claimant is not able to seek the most affordable accommodation, for example, when someone is fleeing a property due to domestic violence and needs to seek a place of safety.

The Council will also consider if the claimant is due to have a deposit or rent in advance in respect of their existing tenancy returned to them and will reduce any DHP for a new deposit by such an amount.”