

FALKIRK COUNCIL

Subject: DISCRETIONARY HOUSING PAYMENT (DHP) – POLICY UPDATE
Meeting: EXECUTIVE
Date: 18AUGUST 2015
Author: DIRECTOR OF CORPORATE AND HOUSING SERVICES

1. INTRODUCTION

- 1.1 Following consideration of a Welfare Reform Update report, the 19 May 2015 Executive requested that a review of the Council's Discretionary Housing Payment Policy (DHP) be undertaken. This is in relation to a High Court Judgement in England against Sandwell Metropolitan Borough Council in respect of that Council's decision to include Disability Living Allowance (DLA) as income within the financial assessment for Discretionary Housing Payment (DHP).
- 1.2 Whilst the Judgement is not binding upon Scottish Authorities, the Executive asked that Falkirk Council's DHP policy be reviewed in light of the Court's decision and that information is provided on those tenants who have not received DHP as a consequence of the Council's policy and setting out any required action.

2. SIZE CRITERIA CASES

- 2.1 Initially in 2013/2014, all tenants who applied for a DHP and had a shortfall in their rent were subject to a financial assessment in line with the Department for Work and Pensions (DWP) Guidance and the policy agreed by members.
- 2.2 In October 2013, the Scottish Government provided additional funding of £266,868 to Falkirk Council to be used to help mitigate the impact of Size Criteria for a Social Sector tenant. When added to the funding received from the DWP this meant that we had a total budget of £449,300 for that financial year.
- 2.3 Those affected by Size Criteria who had shown "intent" to claim were then awarded DHP without financial assessment.

3. NON-SIZE CRITERIA CASES

- 3.1 Those not subject to Size Criteria and those with a shortfall in rent in addition to the Size Criteria reduction, remain subject to a financial test in line with the current policy to determine if they have a requirement for further financial assistance .

4. CURRENT DWP GUIDANCE AND FALKIRK COUNCIL DHP POLICY

- 4.1 The revised DHP Guidance Manual and Local Authority Good Practice Guide published in April 2014 makes it clear that it is for the local authority to determine whether there is a requirement for further financial assistance but goes on to say that, ***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 as a result of the welfare reforms***".
- 4.2 The Guidance Manual further states; ***"In establishing if the claimant requires further financial assistance, you can decide how to treat any income or expenditure, taking into consideration the purpose of the income where appropriate. For example, you may decide to disregard income from disability related benefits as they are intended to be used to help pay for the extra costs of disability As part of the application process you should take care to ascertain whether such money is committed to other liabilities for which it was intended, such as Motability schemes or provision of care, seeking evidence regarding expenditure from the claimant. If you do decide to take such income into account then you should consider providing an explanation to the claimant as to why you have done so"***.
- 4.3 In Section 7 of Falkirk Council's DHP Policy published in May 2013, it states; ***"All income and capital will be taken into account when reaching our decision including income from disability benefits etc. The costs associated with managing any disability should be included in the statement of expenditure"***.
- 4.4 This appeared to be in line with the majority of Scottish Local Authorities as a survey which was circulated by the Institute of Rating Revenues & Valuation (IRRV) in September 2013 showed that of the 17 respondents (excluding Falkirk Council) 12 authorities were taking DLA (care) into account but allowed for associated expenditure.
- 4.5 The existing policy regarding the treatment of Disability Benefits is still in line with the Guidance issued by DWP and is also consistent with how the majority of those authorities who responded to the survey by the IRRV treated this particular income.

5. PROPOSED NEW DHP POLICY

- 5.1 It is proposed to revise the current Falkirk Council DHP policy by amending the wording previously in Section 7, now Section 6, to now read, ***“All income and capital will be taken into account when reaching our decision, however, we will disregard DLA or Personal Independence Payment (PIP) and only include disability related expenditure above the amount of DLA / PIP that is in payment”***. This reflects the clarification that the court has now helpfully provided. An amended copy of the policy is attached for approval.

6. REASSESSMENT OF DLA RECIPIENTS

6.1 2013/2014 cases

- In December 2013, we undertook a review of the claims for DHP that had been rejected as failing the financial test.
- Of the 450 cases rejected, 150 were council tenants. 62 of those were in receipt of DLA. We contacted those affected and requested further information to ensure that they had fully declared all their expenditure, especially that which related to their disability so we could offset in the financial assessment.
- The Service received a very poor response to the requests for more information and only 4 further awards of DHP were made as a result of this exercise. However, the majority of these previously rejected cases were subsequently awarded DHP for the Size Criteria element of the shortfall in their rent when the additional funding from the Scottish Government was received.

6.2 2014/2015 cases

- Following on from the May 2015 executive, we have now examined the list of the 427 rejected cases from 2014/2015 who were deemed not to be in need of further financial assistance.
- Of those rejected, 51 were social sector tenants and only 8 were in receipt of DLA. All 8 cases have subsequently been awarded DHP for the Size Criteria element of their shortfall consistent with our current policy and in line with the Scottish Government intention to fully mitigate Size Criteria, but were deemed to not be in need of further financial assistance for the remaining shortfall due to the high level of their income.

- Should the Executive approve the revised DWP Policy, a further financial assessment on these 8 cases will be carried out to exclude Disability Living Allowance to establish whether or not there is entitlement to a further award of DHP, this may involve some further contact with the individual applicants.

6.3 2015/2016 cases

- No cases refused due to DLA inclusion.

7. FUNDING - BACKDATING

- 7.1 DHP funding is year specific and therefore if any awards are to be made retrospectively for 2013/2014 and 2014/2015 in relation to the cases referred to in section 6, members will need to consider whether funding will come from the 2015/2016 budget. The projected retrospective awards that are likely by re-assessing these claims is approximately £2,500, albeit it is hoped that this will be covered by Scottish Government funding.

8. RECOMMENDATIONS

8.1 It is recommended that the Executive:-

- a) approve the revised DWP Policy as detailed in Appendix 1 to the report: and
- b) approve that expenditure is made from the 2015/16 budget to award DHP to claimants who would have qualified in 2013/14 or 2014/15 had DLA been disregarded in the calculation of Discretionary Housing Payment (and this include associated expenses up to value of DLA).

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DIRECTOR OF CORPORATE & HOUSING SERVICES

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LIST OF BACKGROUND PAPERS

1. R. (on the application of Hardy) v Sandwell MBC (2015) EWHC 890 (Admin)
2. Current DHP policy published May 2013
- 3.



Falkirk Council

*Chief Executive Office
(Finance Services)*

Discretionary Housing Payments Policy

Discretionary Housing Payments Policy

1. Purpose

The purpose of this policy is to set out how Falkirk Council Revenues and Benefits Division will operate the Discretionary Housing Payments (DHP) scheme and to highlight some of the factors that will be considered when deciding if a payment can be awarded under the scheme. Each case will be treated strictly on its merits and all customers will receive equal and fair treatment.

2. Policy Context

The regulations governing the administration of the DHP scheme are the Discretionary Financial Assistance Regulations 2001.

The Government's Department for Work & Pensions (DWP) provides each Local Authority (LA) with a fixed amount of funding to be used for making DHP payments. As a result of the announcements during the passage of the Welfare Reform Act 2012, the Government Contribution has been significantly increased from April 2013 to provide LAs with additional funds to help mitigate the impacts of Welfare Reform in exceptional cases.

In addition, the Scottish Government has provided further funding specifically to mitigate the impact of Size Criteria – Under Occupancy Restriction cases from 2014/2015. .

LAs have overall responsibility for how DHPs are administered and paid. DWP has issued good practice guidance for LAs, which offers advice on how DHPs can be used to provide support to those affected by some of the key welfare reform measures.

The purpose of Falkirk Council's Poverty Strategy "Towards a Fairer Falkirk" is to reduce poverty and the impact of poverty on individuals and communities within our area. The Council want to ensure that inequalities between the wealthiest and the poorest in our communities are reduced and that everyone has a better life. We believe that Falkirk council's approach to DHP should help to mitigate the impact of poverty on individuals' lives as it can temporarily increase household income.

3. Policy Objectives

We will treat all applications on their individual merits and will pay due regard to good practice guidance and the legislative framework ensuring decisions are fair and consistent.

The objectives in administering the fund will help the Council achieve its Poverty Strategy aims to:

- alleviate poverty
- sustain tenancies and prevent homelessness
- support vulnerable people including, for example, domestic violence victims who are trying to move to a place or safety or the elderly in the local community or people experiencing personal and difficult events
- support looked after children and young people leaving care
- safeguard residents in their own homes, for example, families with social services intervention, ex homeless households being settled into the community or families with temporary child care arrangements

4. Qualifying Criteria

DHPs provide **short-term** help to claimants with **exceptional circumstances** who can demonstrate that they need **further financial assistance to meet a shortfall in their housing costs**.

Housing costs generally mean rental liability but can include things like:

- rent in advance;
- deposits where alternative schemes are not available; or
- other lump sum costs associated with a housing need.

To qualify for DHPs, claimants must:

- Be liable to pay rent; and
- Be entitled to Housing Benefit (HB) (not maximum), or Universal Credit (UC) that includes a housing element towards rental liability; and
- Require **further financial assistance** with housing costs to cover all or part of a shortfall, or assist with the cost of taking up a tenancy.

The main exception to this is for those affected by the Size Criteria – Under Occupancy restrictions in the social rented sector (see Section 5 below)

Claimants must demonstrate that they are unable to meet the shortfall from their available income and there must be funds available to Falkirk Council to allow a payment to be made.

DHP cannot be awarded to cover:

- Council Tax liability;
- Ineligible service charges;
- Increases in rent due to deductions from HB for outstanding rent arrears; or
- Deductions that are being made for HB as a result of DWP sanctions being applied for, for example, failure to attend a DWP work-focused interview or a prescribed training scheme, etc.

5. The four different strands of DHP

Strand 1. The original temporary hardship scheme;

This funding allows the council to help people who have exceptional circumstances who need further financial assistance but not as a result of the Welfare Reform changes, i.e. lone parents with dependent children, medical cases, pregnant females, increased non-dependant deductions and people with high debt – low incomes.

Strand 2. The Local Housing Allowance (LHA) welfare reforms:

This funding allows the council to help those who are renting in the private sector and have been affected by the changes to the Housing Benefit (Local Housing Allowance) scheme, including restricting the eligible rent for Housing Benefit from the median (50%ile) rent in the area for each size of accommodation to the 30%ile of rents in the area.

Strand 3. The Benefit Cap

This funding allows the council to help those affected by the Benefit Cap which is where the DWP adds together all the benefits that a claimant receives (including Housing Benefit) and they then inform the council where the total exceeds the cap currently set at £500 per week for families and £350 for single people. The council must then deduct any excess from the claimant's Housing Benefit. The Welfare Reform & Work Bill published in July 2015 announced further reductions to the cap level to be introduced in 2016/2017

Strand 4. Size Criteria – Under Occupancy Restrictions

This funding, provided by the Scottish Government, allows the council to mitigate the effects of the Size Criteria restriction on Housing Benefit for those social sector, working age tenants as the absolute cap on spending was also lifted in 2014/2015. DHP will fully mitigate the effects of the rent shortfall caused by this restriction. This means that the application and assessment procedures for this particular strand of DHP will be different from those of the other three DHP strands.

6. (a) Applying for a DHP in Strands 1, 2 & 3

In most cases, the person claiming DHP will be the person entitled to HB or UC. We will accept claims from appointees or representatives, where it is appropriate to do so. The claimant must be entitled to HB, or UC, where appropriate for the weeks when DHP is requested.

Applicants must complete a written application for DHP. Forms can be downloaded from our website

<http://www.falkirk.gov.uk/services/homes-property/council-housing/rent/discretionary-housing-payments.aspx>

or obtained from any of the One Stop Shops in the Falkirk Council area. Alternatively, claimants can request a DHP claim form by calling us on 01324 503850.

Completed forms must be signed and returned to the Revenues and Benefits Division who are located at the One Stop Shops, or sent to the DHP Team, Revenues & Benefits Division, Falkirk Council, One Stop Shop, Callendar Square Centre, Falkirk, FK1 1UJ.

The form outlines the evidence we need to support a claim. This must be provided to us within a month of submitting the DHP claim e.g.:

- medical evidence where the request is being made on health grounds;
- income and expenditure statement; or
- Written evidence where the claimant is at immediate risk of eviction.

6. (b) Determining entitlement for Strands 1, 2 & 3

We will verify the information provided where appropriate and may ask for reasonable, additional evidence where this is necessary. We will normally make these requests in writing.

Forms will be date stamped on receipt and this will count as the date of claim.

In deciding whether to award a DHP, we will consider a range of factors including e.g.:

- The amount of HB in payment;
- The amount of shortfall in housing costs;
- Is there an immediate risk of eviction if help with housing costs is not provided?
- On considering the household's financial circumstances, can the shortfall be met from their own resources?
 - What is the amount of disposable income?
 - Are there any assets that can be realised?
 - Is there any capital that can be utilised?
 - Can any debts / expenses be renegotiated / reduced?
 - Is any expenditure excessive or non-essential?
 - Are all the adults in the household contributing financially?
 - Is there any other help or assistance that they may be entitled to, or is more appropriate, that they have not claimed?
- On considering the household's housing options, can they reduce the amount of rent they are being charged?
 - Can the claimant negotiate a rent reduction, or have they already done so?
 - The availability of suitable cheaper alternative accommodation.
 - Have they considered taking in a lodger or a non-dependant?
- Household's medical and social circumstances;
- The suitability of the property for the household's needs and the cost of relocation;
- Any other exceptional circumstances associated with the claim;
- Whether any previous DHP awards have been made, and if so, the circumstances under which the award was made;
- The amount of money available within the associated budget that has been set; and
- The priority area into which the applicant falls and the ranking assigned.

The list of factors is not exhaustive and we will also refer to the DHP Guidance published by DWP when reaching our decision

All income and capital will be taken into account when reaching our decision, however, we will disregard DLA or PIP and only include disability related expenditure up to the amount of the DLA / PIP that is in payment.

Our overall assessment will balance the needs of the claimant and their household, the degree of financial hardship and the likelihood that making a DHP award will meet the policy objectives outlined in section 2, above.

We will normally make a decision on a DHP claim within 14 days of receipt of all the information we need to make our decision.

However, where the claimant has indicated that there is an immediate risk of eviction, we will make a decision within 2 days of having all the information and advise them by telephone, as well as sending written confirmation.

7. Applying for a DHP in Strand 4 (Size Criteria)

To assist those tenants affected by Size Criteria – Under Occupancy Restriction we have created a shortened DHP claim form as we must establish “intent to claim” before we can make an award.

The short form is available on our website at;

<http://www.falkirk.gov.uk/services/homes-property/council-housing/rent/discretionary-housing-payments.aspx>

Or can be obtained from any One Stop Shop in the Falkirk Council area. Alternatively, claimants can request a DHP claim form by calling us on 01324 503850.

8. Determining entitlement for Stand 4

Before making a DHP award, the council must be satisfied that the claimant is entitled to Housing Benefit or Universal Credit (Housing Costs Element) and that there is a shortfall in rent due to the Size Criteria – Under Occupancy restriction. There is no need to determine whether or not the claimant is in need of further financial assistance in this Strand and therefore a DHP will be awarded to cover the Size Criteria – Under Occupancy restriction in full.

9. Amount and Period of Award

Strands 1, 2 & 3

DHP can only be awarded to cover any shortfall in housing costs up to the level of the eligible rent.

The start date of a DHP award will be normally be from either the Monday following the date of receipt of the DHP claim by the Revenues and Benefits Division, or the date on which entitlement to HB, or UC arose (if DHP claim received within one month from date of HB/UC being decided) whichever is earlier or most appropriate.

We will consider requests to backdate this to an earlier date where we feel there is good cause and it is appropriate to do so but we cannot backdate into the previous year if that years funds have already been exhausted.

We will award payments for different periods of time, dependant upon the individual's need up to a maximum of 26 weeks. In exceptional circumstances, we may extend the award for a further period of up to 26 weeks

Strand 4

DHP will be awarded for the full year for those affected by Size Criteria - Under Occupancy so long as there is Housing Benefit or Universal credit in payment for that period.

11. Method of Payment

The Revenues and Benefits Division will decide to whom DHP will be paid, taking into account the circumstances under which the award was deemed appropriate. Payees may include:

- The claimant;
- Their partner;
- An appointee;
- Their landlord (or agent), or third party where appropriate;
- Any other third party considered appropriate to make payment to.

DHP for council tenants will be credited to the rent account together with the HB award.

Tenants living in the private rented sector, or RSLs, will be paid by BACs or cheque.

Payment frequency will normally be in line with HB, or UC, payments.

12. Changes of Circumstances

Claimants awarded DHP are required to tell us when their circumstances change. We may need to revise an award of DHP in light of this. We will use changes reported for HB to review DHP awards where appropriate

13. Notification

We will advise the claimant in writing of the outcome of their application within one calendar month of receipt. Where the application is unsuccessful, we will set out the reasons why this decision was made and explain the right of review. Where the application is successful, we will advise the customer of:

- The weekly amount of DHP awarded;
- The period of the award;
- How, when and to whom the award will be paid; and
- The requirement to report a change in circumstances;

14. Overpayments

The Council will seek to recover DHPs found to be overpaid due to a misrepresentation or failure to disclose a material fact. Where DHP is overpaid and we are recovering it, we will issue a decision letter to the claimant and the payee which will outline how the sum will be recovered. DHP overpayments will not be deducted from ongoing housing benefit awards. A separate invoice will normally be raised. A request for review can be made against this decision.

15. The Right to Seek a Review

DHPs are not payments of benefit and do not carry a statutory right of appeal to a Social Security Tribunal but we will review a DHP decision in the event of a dispute or where the customer asks for a reconsideration.

This may be in relation to a decision:

- not to award or to cancel a DHP;
- about the amount of DHP awarded;
- about the start date of the DHP award when a backdate is requested, or the refusal to backdate a claim; or
- to recover an overpayment of DHP.

There is no right of review against a decision not to award DHP because of one of the following grounds:

- Qualifying criteria not met;
- Insufficient funds being available; or

Our review process is as follows:

- Customers must request a review in writing within 28 days of receipt of the written DHP decision notice.
- A Senior Officer within the Revenues and Benefits Division, not involved in the initial decision-making, will reconsider the case and decide whether or not to change the original decision. The claimant will be notified in writing of the outcome of the reconsideration. We will carry out this reconsideration within 28 days of receipt of all the information we need to do so.
- Where the original decision remains unchanged, the case will be referred to a “Cross Panel Review” team with suitably qualified representatives from across the Council services. No officer involved in the initial decision-making or reconsideration will be involved in this review. The claimant will be notified of this referral in writing.
- We will normally notify the claimant of the review panel’s outcome in writing with reasons within 8 weeks from the date we refer the case to the Panel for a decision.

We may need to extend the time period for a review to be held in exceptional circumstances but we will advise the customer of this and the reasons for this.

The decision regarding the outcome of the review will be final and binding and may only be challenged via the judicial process or by complaint to the Scottish Public Services Ombudsman (SPSO).

16. Provision of Help and Advice

All customers that submit applications will be asked if they would like further advice and assistance from council services in relation to, for example, housing, welfare benefits, debt advice or help in managing money, and given information about where they can go for other help and support.

We will help customers access the information and support they need to look at future options in relation to maximising income, budgeting, housing and employment so that individuals are not reliant on DHPs in the longer term

17. Publicity

We will actively seek DHP applications from those who fall into 4 Strands as detailed above to ensure we maximise the income of vulnerable individuals.

We will publicise the DHP scheme and work with other services and partner organisations, in particular the Citizens Advice Bureau, registered social landlords and voluntary sector organisations to maximise take-up and help ensure resources are targeted to those in greatest need.

A copy of this policy statement will be made available for inspection and will be posted on the Council's web site together with a DHP leaflet and application form. A DHP hotline number is available to service enquiries 01324 503850.

18. Monitoring

Details of all DHP applications will be recorded to establish:-

- Whether the tenant has been affected by one of the key welfare reforms; the Benefit Cap, the Size Criteria – Under Occupancy Restrictions, the Local Housing Allowance reforms or a combination of the welfare reforms;
- The total amount paid to the claimant and the period of the award
- The intended outcome of the award, for example to help with short term rental costs until the claimant secures alternative accommodation

DHP spend must be reported to the Department for Work & Pensions and the Scottish Government on a monthly basis and are therefore readily available on request.

19. Policy Review

We will review this policy regularly and as required to reflect changes in legislation / operational arrangements.

Bryan Smail
Chief Finance Officer