

REPORT TO	DATE OF MEETING
Cabinet	20 March 2013

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SUBJECT	PORTFOLIO	AUTHOR	ITEM
Revenues and Benefits Discretionary Policies	Finance and Resources / Shared Service & Corporate Support	Hannah Young	8

SUMMARY AND LINK TO CORPORATE PRIORITIES

This report comprises recommendations to update South Ribble Borough Council's policies for Discretionary Housing Payment and Discretionary Rate Relief from 1 April 2013, and requests powers to amend these policies and existing policies for Localised Council Tax Support and Exceptional Hardship for Administrative changes.

This report relates to the Corporate Priority of Strong and Healthy Communities.

RECOMMENDATIONS

That the Cabinet recommend to Council:

- (1) That the updated "Discretionary Housing Payments Policy" (Appendix A) be adopted.
- (2) That the updated "Discretionary Rate Relief Policy" (Appendix B) be adopted.
- (3) That powers to make minor administrative changes to the above policies, plus:
 - (3a) The Council's Council Tax Support Scheme
 - (3b) Exceptional Hardship Policies

be delegated to the Director of Business Transformation in consultation with responsible Cabinet Member.

Changes to existing policies are highlighted in red within the Appendices.

BACKGROUND

Discretionary Housing Payments

Discretionary Housing Payments (DHP) grants Councils the power to top up the Housing Benefit and/or Council Tax Benefit Statutory Schemes. The legislation governing DHPs can be found in the Discretionary Financial Assistance Regulations 2001 (S1 001/1167 - DFA Regulations).

The main features of the scheme are:

- The claimant does not have a statutory right to payment
- The total amount that can be paid by an Authority in any financial year is cash-limited by the Secretary of State
- The operation of the scheme is at the discretion of the Council with specific exceptions
- The scheme is completely separate from the Statutory Housing Benefit and Council Tax Benefit (HB/CTB) Schemes apart from the fact that HB or CTB must be in payment and the weekly DHP amount awarded must not exceed the maximum HB or CTB that could be awarded in that case.

From 1 April 2013 Council Tax Benefit is being abolished and being replaced with a Localised Council Tax Support Scheme (LCTS). DHPs cannot be used for payments of LCTS (This element is now part of the Council's own LCTS Scheme). It is also intended that with the introduction of Universal Credit from October 2013 onwards DHPs can be also awarded for customers in receipt of the housing costs element of this benefit.

The Council's current policy refers to Council Tax Benefit, as a result of this we must remove reference to this Benefit from our policy. In addition it is opportune to introduce changes resulting from the implementation of Universal Credit during 2013.

Discretionary Rate Relief

Over the past couple of years a number of business Owners/Landlords/Agents have sought to avoid paying empty property rates by allowing charities to occupy a premises for a nominal rent. This is allowing the owners of the property to avoid becoming liable to empty property charges. The owners generally cover the costs of the charity for payment of the rates. As our current policy stands it is nearly impossible for us to refuse discretionary rate relief if the charity applies for this relief. This means that the Council/Government lose out on empty property charges.

The Council's existing policy's sole aim is to provide assistance to rate payers which are Charities or Not for Profit organisations. Many of these organisations support the Council's aims and objectives and in some cases they relieve the council of the burden of providing these services.

This policy needs to be amended to prevent the Council inadvertently contributing towards any Rate Avoidance Schemes.

Localised Council Tax Support

This replaces the Council Tax Benefit scheme which will be abolished from April 2013, and there are some minor administrative changes required.

Exceptional Hardship

This is a scheme which exists to award additional financial assistance for customers who are eligible for the Council Tax Support Scheme, and there are some minor administrative changes required.

RECOMMENDATIONS

Discretionary Housing Payments

It is recommended that South Ribble Borough Council's DHP policy is amended to reflect the changes highlighted in this report, including Department for Work and Pensions guidance that we also consider awarding one off payments. These can be considered in exceptional circumstances for costs (such as removal costs, deposits etc) and are to award additional financial assistance in light of the Welfare Reform Bill.

Discretionary Rate Relief

It is recommended that South Ribble Borough Council adopt the revised policy in order to protect itself from legal challenge(s) from owners/ landlords/agents of properties using Bluetooth, Wireless or similar. The changes to the policy will enable us to refuse discretionary rate relief in these rate avoidance cases.

Localised Council Tax Support

South Ribble Borough Council adopted the Localised Council Tax Support scheme however the policy didn't provide any delegated powers to make even the most minor amendments. Delegated powers are sought to make minor changes to the policy without having to refer back to full council. It is recommended that in light of the importance of this policy that any delegated power rests with the Director of Business Transformation in consultation with the relevant Cabinet Member's agreement.

Exceptional Hardship for Localised Support for Council Tax

As above for Localised Council Tax Support scheme's Hardship Policy.

WIDER IMPLICATIONS

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these. A risk assessment has also been carried out.

FINANCIAL	<p>Discretionary Housing Payments A cost to the council would only occur if the total Discretionary Housing payments granted in any financial year exceeded the government threshold figures.</p> <p>Discretionary Rate Relief There is the potential for additional costs / loss of income to be incurred by both the government & council if the amended policy is not adopted.</p> <p>The financial cost of all discretionary rate relief awarded is included in the business rate forecasts for 2013/2014. The impact of rate relief granted will be monitored on a monthly basis against the forecasts to assess any potential financial impacts that could be charged against the revenue budget.</p>
LEGAL	The legislation governing DHPs can be found in the Discretionary Financial Assistance Regulations 2001 (S1 001/1167) (DFA Regulations)
RISK	There are no major risks attached to this policy
THE IMPACT ON EQUALITY	These policy amendments are subject to a separate Equality Impact Assessment

OTHER (see below)	
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<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Crime and Disorder</i>	<i>Efficiency Savings/Value for Money</i>
<i>Equality, Diversity and Community Cohesion</i>	<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Health Inequalities</i>
<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>	<i>Staffing, Training and Development</i>	<i>Sustainability</i>

BACKGROUND DOCUMENTS

- Discretionary Financial Assistance Regulations 2001 (S1 001/1167). (DFA Regulations).
- Local Government Finance Act 1988 as amended
- Local Government Finance Act 2012
- South Ribble Borough Councils' Localised Council Tax Support Scheme
- South Ribble Borough Councils' Exceptional Hardship Policy



DISCRETIONARY HOUSING PAYMENTS POLICY 1st APRIL 2013

BACKGROUND

A scheme exists which grants Councils powers to make Discretionary Housing Payments (DHP) to top up the Housing Benefit Statutory Scheme. The legislation governing DHPs can be found in the Discretionary Financial Assistance Regulations 2001 (S1 001/1167 - DFA Regulations).

The main features of the scheme are :-

- The claimant does not have a statutory right to payment
- The total amount that can be paid by an Authority in any financial year is cash-limited by the Secretary of State
- The operation of the scheme is at the discretion of the Council with specific exceptions
- The scheme is completely separate from the Statutory Housing Benefit (HB) Scheme apart from the fact that the customer must be entitled to Housing Benefit
- If they are not entitled to Housing Benefit they must be entitled to Universal Credit (UC) with housing costs included and have a rental liability
- The weekly DHP amount awarded must not exceed the maximum HB that could be awarded in that case
- A one off award can be considered in exceptional circumstances for costs (such as removal costs, deposits etc) and are to award additional financial assistance in light of the Welfare Reform Bill.

THE COUNCIL'S POLICY

Purpose

The purpose of this policy is to specify how South Ribble Borough Council will operate the scheme and to indicate the factors that will be considered when deciding if a DHP can be made. We aim to treat all claimants with equality and fairness considering the diverse needs of our customers when administering the scheme.

Statement of objectives

The Council will make DHP to claimants who meet the qualifying criteria as specified in this policy. The Council will treat all applications on their individual merits, but will seek through the operation of this policy to:

- Alleviate poverty;
- Encourage and sustain people in employment;
- Safeguard people's housing; keep families together;
- Help people through personal crises and difficult events;
- Helping those who are trying to help themselves;
- Supporting the vulnerable in the local community; and
- Supporting young people in the transition to adult life;
- **Assisting people to move to affordable accommodation.**

Claiming a DHP

A claim for a DHP should be made in writing

- The Council will then issue the claimant with a **DHP form** for completion. The claimant must return the completed form to the Council within one month of its issue, for the claim to proceed.
- All applications for a DHP must be made by the HB benefit claimant **or Universal Credit claimant** and in the case of a married or unmarried couple as decided for statutory HB purposes must be made jointly, or a legal appointee.
- The Council may require the claimant to attend an interview where possible to discuss the application and request any reasonable evidence to support the claim for a DHP. The Council will make such requests in writing and the claimant should provide the evidence within one month. Existing evidence, which supported their HB claim **if applicable**, may be taken into account. **Information may also be obtained from DWP particularly for Universal Credit applicants.**
- If the claimant does not provide the required evidence, the Council will still consider the application. However, the Council may disregard any unsubstantiated statements or draw its own conclusions from other evidence available.
- The Council may in any circumstances verify any information or evidence provided by the claimant by contacting third parties, other organisations and the claimant.

Period of award

The Council will decide the start date of the claim for DHP, taking into account the claimants circumstances. This date may be:

- (i) The date on which the claim for a DHP is received by the Council; or
 - (ii) The date on which entitlement to HB commenced; or
 - (iii) Another more appropriate date dependent on the circumstances of the case
- The Council cannot award a DHP for any period outside an existing HB benefit period granted under the HB statutory scheme **or outside an existing UC period.**

- The Council will not usually award a DHP for a period exceeding 12 months.
- The Council will consider any reasonable request for backdating an award of DHP. All such requests should give the reasons why the application was not made at an earlier time. The Council reserves its discretion to make backdated awards of DHP, but in any case will not make awards where:
 - (a) The underlying conditions for an award are not met; and
 - (b) The application was made more than 3 months after the period for which it is made.

The amount of DHP awarded

The award of a DHP will be the exception rather than the norm. The Council will consider whether to award a DHP and the amount of any such award. It will take into account:

- The amount of Housing Benefit or **Universal Credit** in payment;
- The liability of the claimant to pay rent, net of any deductions specified by Regulation 3 of the Discretionary Financial Regulations 2001 ;
- Whether a person's maximum Housing Benefit has been restricted by the Rent Officer Service, the amount of Local Housing Allowance or the Council; and if so:
 - (a) The amount of the restriction;
 - (b) The reason for the restriction;
 - (c) The length of time that the restriction has been imposed.
- Steps taken by the claimant to reduce their rent liability.
- The financial and social health/medical circumstances of the claimant, their partner and any dependants and any other occupants of the claimant's home;
- The income and "essential" expenditure of the claimant or their family;
- Any savings or capital that might be held by the claimant, their partner and any dependants or other occupants of the claimant's home;
- The availability and any steps taken by the claimant to obtain extra income or to reduce expenditure of the claimant or their family;
- The level of indebtedness of the claimant and their family;
- The exceptional nature of the claimant and their family's circumstances. Whether there have been any previous awards of DHP; and if so
 - (a) the number, length and dates of those awards; and
 - (b) what action the claimant has taken to reduce the need for a DHP
- The impact on the claimant should the claim to DHP not be granted;
- The amount of money available to the Council to spend on this scheme within the cash limits specified by the Secretary of State from time to time. The Council may take into account expenditure and estimated committed expenditure.

In relation to a request for a one off payment the Council will consider:

- What the need is
- What capital and resources has the applicant got access to in order to meet the need
- Whether the need can be met from elsewhere (rent bond guarantee scheme etc)
- Whether meeting the need would sustain (the applicant's) housing costs without additional assistance

The award of DHP at one time does not guarantee that a further award will be made at a later date even if the claimant's circumstances remain the same. The Council cannot fetter its discretion in making one decision on a claim with regard to a later claim by the same claimant.

The Council, taking account of the above matters and the statutory limits imposed by DFA Regs, will decide the amount of any DHP award. The Council may decide not to award anything or may award any amount up to the maximum allowed under the DFA Regs.

Changes of Circumstances

As claimants for DHP must be in receipt of Housing Benefit or Universal Credit with housing costs included, they therefore remain under a general requirement to inform us of changes in their circumstances that might affect their claim for HB and also for Universal Credit

The Council's policy will be that a change in the claimant's circumstances will not affect the level of their DHP providing:

- They retain entitlement to Housing Benefit or Universal Credit with housing costs;
- The level of their Housing Benefit, plus the DHP does not exceed their liability to pay rent, less the deductions specified in Regulation 3 of the Discretionary Financial Regulations 2001 ;
- The change of circumstances was not specifically defined as being critical to the award of the DHP. The Council may specify changes in circumstances that will need to be notified to the Council as it is considered that the amount or need for a DHP will change on such an event. In these cases the Council may revise the DHP award.

Method of Payment

We will decide to whom we will make payment of the DHP based upon the circumstances of each case. This could include:

- The claimant; their partner;
- An appointee;
- Their landlord (or an agent of the landlord); or
- Any third party to whom it might be appropriate to make payment.

We will pay any award of DHP by the most appropriate means available in each case. This could include payment:

- With Housing Benefit;
- By cheque or BAC's ;
- By offsetting the DHP against any other liability the claimant or partner has to the Council to reduce indebtedness and reduce their expenditure.

We will decide in each case whether the DHP should be paid in advance or in arrears.

Notification

We will inform claimants of the outcome of the application within 10 working days of making a decision about their DHP claim. We will notify:

those whose application is unsuccessful

- The reasons why we have decided not to award a DHP

those whose application is successful

- The amount of DHP awarded;
- Whether it is paid in advance or in arrears;
- The period of the award;
- How, when and to whom the award will be paid;
- A summary of the reasons for the award, any requirement to notify us of changes in circumstances that could affect the DHP award.

To all claimants

- A reminder of the requirement to notify the council of changes in circumstances;
- Their appeal rights

Appeal Rights

DHP's are not payments of Housing Benefit and are therefore not subject to the statutory benefits appeals mechanism where appeals are decided by the Tribunal Service, which is an independent statutory body and part of the Justice Ministry. The Council will therefore decide any appeals relating to DHPs.

We will therefore operate the following policy for dealing with appeals about DHPs.

- A claimant (or their appointee or agent) who wants an explanation of a DHP decision may request one in writing during the period of the DHP award.
- A claimant (or their appointee or agent) who disagrees with a DHP decision may dispute the decision.
- Any such dispute must be made in writing, and must be made within one calendar month of the written decision about the DHP being issued to the claimant. Officers will explain the DHP decision verbally to the claimant by telephone or by interview and seek to resolve the disagreement. Where this cannot be achieved Officers will formally review the decision.
- The Officers will reconsider the award of any DHP that has been disputed and notify the claimant of the outcome of the review. A review will be suspended if more information is needed from a claimant until the information is received. The claimant will have one month to supply any relevant information.
- In the event that following an internal review of a decision, the Officers decide that the original decision should not be revised, we will notify the claimant. There are no further rights of appeal against a decision.

- In the event that the claimant feels the internal review has not been undertaken fairly the claimant can request that an independent senior officer (appointed by the Head of Service) shall review the decision to ensure that it has been made fairly and complies with this policy. In the event that this officer concludes that the decision has not been made fairly or in accordance with this policy, they shall refer the matter back to the officer conducting the internal review for reconsideration.

Overpayments

The Council will seek to recover any DHP found to be overpaid. We will seek recovery from the claimant and/or their partner, regardless of how and to whom the DHP was paid. We will do this by invoicing the claimant and/or partner. We will not seek recovery of any overpayment caused through Local Authority error unless it is reasonable that the recipient could realise the decision was incorrect. Any decision that a DHP is overpaid will be notified. An appeal may be made against this decision.

The Council will only allow an appeal against the recovery of a DHP overpayment on the following grounds:

- The calculation of the overpayment;
- That the overpayment should not be recoverable as it was caused by LA error where the recipient could not reasonably know an error had been made.

Fraud

The Council is committed to fight against fraud in all its forms. Discretionary Housing Benefit payments can only be awarded if the customer is already in receipt of Housing Benefit or **Universal Credit with housing costs included**. For Housing Benefit customers their circumstances are obtained from their completed benefit application form and therefore the fraud would have been perpetrated against both the benefit application and the DHP application. For Universal Credit customers their circumstances are obtained from their completed DHP application form along with information received from DWP and therefore the fraud would have been perpetrated against both the Universal Credit application and the DHP application.

Any cases where the Council suspects that fraud has occurred will be investigated and subject to the actions available within the Council's Anti-Fraud policy.

South Ribble Borough Council Discretionary Rate Relief Policy



Effective 1st April 2013

The Council has adopted a revised Discretionary Rate Relief policy effective from 1st April 2013. This policy covers all the Councils Discretionary Powers under Sections 43 to 49 of the Local Government Finance Act 1988 as revised. (Revisions shown in Red)

Details of the revised policy are:-

- (1) No discretionary relief shall be given to charity shops, housing associations, voluntary schools or colleges that are charitable trusts.

No discretionary relief will be awarded to charities that are occupying hereditaments in return for a payment/donation from the landlord/owner/agent of the hereditament and occupying premises for a nominal rent.

No discretionary relief will be awarded to charities that are occupying hereditaments for the transmission of "Bluetooth" messages or the provision of wireless internet services.

Explanatory notes:

- a. *Charity Shops are in direct competition with conventional shops and relief over and above mandatory relief could lead to commercially run shops suffering loss of trade.*
- b. *Housing Associations and voluntary schools are already publicly funded to a substantial degree and any discretionary relief would essentially be moving money from one public body to another.*
- c. *There have been a number of charities who use governing charitable occupation as a means of avoiding payment of empty property rates by landlords. This is occurring nationally. Whilst the practise is legal, South Ribble Borough Council does not feel it is in the interest of its Council Tax Payers to fund such tax avoidance schemes. These schemes often involve the broadcasting of Bluetooth messages and/or the provision of free wireless internet or similar.*

- (2) 20% discretionary relief shall be given to charities other than those mentioned in (1).
- (3)
 - (a) 100% discretionary relief shall be given to sporting and recreational clubs that are not established or conducted for profit, are not accredited by the Inland Revenue as Community Amateur Sports Clubs and which do not have bar facilities included in the rating assessment for which relief is given;
 - (b) 20% discretionary rate relief shall be given to sporting and recreational clubs that are not established or conducted for profit, are accredited by the Inland Revenue as Community Amateur Sports Clubs and which do not have bar facilities included in the rating assessment for which relief is given.
- (4)
 - (a) Discretionary relief will only be given to sporting and recreational clubs that are not accredited by the Inland Revenue as Community Amateur Sports Clubs and have

bar facilities included in the rating assessment for which relief is given, If they are not established or conducted for profit and the following criteria met:-

Organisations displaying restrictions upon membership and access will not be granted Discretionary Rate Relief:

- An excessive membership fee will be seen as restrictive
- Membership should be open to everybody
- 75% of members must be South Ribble residents

The level of effort made by the organisation to encourage membership from groups such as young people, pensioners, disabled persons, unemployed.

- The facilities should be made available to people other than members
- Reduced fee structures for such groups,
- Schemes of education or training for such groups
- Accessibility to the building for disabled people will enhance the application.

Where these criteria are met the relief shall be 75% on the first £3,500 of rateable value, 50% on the second £3,500 of rateable value, 25% on the third £3,500 of rateable value and zero on any excess of rateable value over £10,500.

Explanatory note

This will align South Ribble's policy with that of many other Local Authorities both locally and nationally.

- (b) Discretionary relief shall be considered for not for profit organisations where their main function is to support South Ribble Borough Councils' "Healthy Communities" Priority. Access must be available to all members of the community without subscription

Explanatory note

This will enable the Council to consider applications from other not for profit organisations who support this corporate priority.

- (c) Sporting and recreational clubs that have bars included in the rating assessment and are accredited by the Inland Revenue as Community Amateur Sports Clubs will not be awarded discretionary relief.

Explanatory note:

The reasons for different rates of relief for clubs with and without bars are twofold. The first is moral in that there is an argument that public funds should not be used for funding bars. The second is financial in that a club with a bar is better placed to raise its own funds via bar profits rather than being reliant upon public funds. The sliding scale of relief mentioned in paragraph 4 (a) is to represent the concept that a larger club is more likely to be able to raise its own funds via sponsorship and other fund raising thereby reducing the need for public funds. The rateable values used in the sliding scale have been left unchanged since the 2005 Rating List as the 2010 revaluation has had little or no impact on the Rateable Values of those rate payers in receipt of this relief, any increase will be more than offset by the rate in the pound reduction.

- (5) Discretionary relief shall be given to ex-service personnel clubs where part of the club is used for welfare purposes by an ex-service personnel charity. The relief shall be 100% on that proportion of the rateable value as is reasonably attributable to the welfare activities of the charity.

Explanatory note:

Ex-service personnel clubs frequently perform a dual function - that of a conventional social club and that of a base for welfare activity by the parent charity.

- (6) 50% discretionary relief shall be given to businesses qualifying for mandatory rate relief under the rural settlement scheme where the business is either the sole post office or, where the only post office is not also a general store, the sole general store in the settlement receiving mandatory relief.

Explanatory note

This reflects the high importance that such businesses have in rural communities.

- (7) 50% discretionary relief shall be given to businesses qualifying for mandatory rate relief under the rural settlement scheme where the business is sole food store in the settlement receiving mandatory relief.

Explanatory note:

Although we are unaware of any possible candidates under this heading who are not already covered by section (6) it deals with the response from Eastern Area Committee during the 2005 consultation

- (8) Discretionary relief will not be given to any other business qualifying for mandatory rate relief under the rural settlement scheme under either the Local Government and Rating Act 1997 or the Rating (Former Agricultural Premises and Rural Shops) Act 2001, including the sole public house or petrol filling station in a settlement receiving mandatory relief.

Explanatory note:-

This paragraph is inserted to tidy up the existing policy. We do not have any businesses that qualify for mandatory relief under these provisions as the rateable value limit is low. However, if we did, we have no rural settlements that are so isolated that there is not a nearby public house or filling station even if it may not be in the settlement itself. Discretionary relief could be seen as giving an unfair additional trading advantage.

- (10) Discretionary relief will not be given to businesses qualifying for mandatory Small Business Rate Relief under the Local Government Act 2003 unless the business satisfies one or more of the specific qualifying conditions contained elsewhere in this policy.

Explanatory note:

This exclusion is recommended because these businesses could be anything and, unless they satisfy any of the specific criteria elsewhere in the policy, special cases can be dealt with under section 11.

- (11) All applications for relief under S44A (Partly Occupied Hereditament Relief) shall be determined in accordance with the rules governing empty property charges and assessed in accordance with the principal covering Hardship Relief.

- (12) All formal applications for Hardship Relief will be referred to the council's cabinet committee for a decision based on the appropriate legislation. All applications will be subject to an initial review by a council officer.

- (13) In all cases the percentage quoted for discretionary or hardship relief is the percentage of rates payable after any transitional calculation but before any award of mandatory relief.