



Neighbourhood Services & Community Involvement Scrutiny Commission

Discretionary Policy Review 2017/18

Assistant City Mayor: Cllr Kirk Master

Neighbourhood Services and Community
Involvement Scrutiny Commission: 28 March 2018

Lead director: Alison Greenhill



City Mayor

Useful Information

- Ward(s) affected: All
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1. **Purpose of Report**

- 1.1 The purpose of this report is to outline the Council's Discretionary Housing Payment (DHP), Council Tax Discretionary Relief (CTDR) and Community Support Grant (CSG) policies, and to present key amendments intended to further focus intervention funding towards the prevention of homelessness and managing short term financial crises.

2. **Summary**

- 2.1 In 2017 the city has continued to be impacted by welfare changes. The most significant are the reduced benefit cap from January 2017, restrictions to allowances for children born after April 2017, the benefit rate freeze and Universal Credit, commencing Full Service (UC FS) in June 2018.
- 2.2 Discretionary support represents a crucial safety net for vulnerable households, and the city has experienced unprecedented demand from welfare reform primarily affecting DHP spend, as recent changes disproportionately affect housing cost entitlement. The Council also provides CTDR for those experiencing difficulty paying their Council Tax charge, and non-financial emergency assistance under the CSG scheme.
- 2.3 Our key priorities for our discretionary policies in 2018/19 are to:
- Include in our policies explicit protection for vulnerable groups – including disabled households, cases referred fulfilling our statutory homelessness duties, those engaging with the Early Help Family Programme and households including care leavers under the age of 25;
 - Following successful pilot outcomes, introduce referred access to social welfare advice for discretionary award claimants affected by the Benefit Cap;
 - Maintaining the Council's commitment to time-limited underoccupancy unless exceptions apply, to tackle overcrowding and our new obligations under the Homelessness Reduction Act.
- 2.4 The table below details the discretionary spend by year and the number of applications received, demonstrating this fluctuation in expenditure.

Discretionary fund	Funding source	2016/17 fund value	2016/17 actual spend	2017/18 Fund value	2017/18 projected spend	2018/19 Projected fund value	2018/19 Projected spend
DHP	DWP	£781k	£820k	£1.186m	£1.241m	£1m	£1.5m
CTDR	General Fund	£500k	£313k	£500k	£360k	£500k	£500k
CSG	Welfare Reserves	£500k	£250k	£500k	£250k	£500k	£300k

3. Discretionary Housing Payments

- 3.1 Government DHP allocation was increased to £1.1m in 2017/18, and is expected to be exhausted by the end of the financial year. From 2018/19 onwards, the DHP budget is expected to reduce by £100,000 per year until 2020/21, although we anticipate applications to remain close to their current level of over 3,000 annually. Our future capacity to meet demand solely from within the DWP grant alone is limited unless changes are made to encourage and support a greater number of applicants towards greater self-reliance.
- 3.2 Our statutory obligation is to ensure that the most vulnerable claimants are provided with appropriate assistance, particularly those who are severely disabled and unable to change their circumstances. We are also proposing action to help meet new obligations under the Homelessness Reduction Act, to ensure the continued availability of permanent accommodation. We have identified three new categories to be offered explicit protection:
- for vulnerable tenants placed under our homelessness duty to be provided with rent deposits, rent-in-advance and top-up payments where required to sustain tenancies,
 - for families engaging with the Council's Early Help Family programme, and
 - for young care leavers up to the age of 25.
- 3.3 Despite the impact of more recent and forthcoming welfare reform changes, over 70% of the DHP budget remains committed to two changes introduced in 2013 – underoccupancy and the Benefit Cap. In many cases affected households may be able, with assistance, to achieve greater financial independence through improving their skills, seeking employment, exploring alternative accommodation and receiving expert advice on how to resolve debt issues and budget on their existing income.
- 3.4 The Council's discretionary policies have previously introduced some conditional elements to awards namely, encouraging claimants affected by under-occupancy to seek alternative accommodation, and engaging Universal Credit claimants with intensive budgeting and money management advice delivered by CITAL. We are proposing to strengthen this conditionality and better target who we support.

- 3.5 Analysis has identified that existing recipients of DHP's affected by underoccupancy are not fulfilling the existing policy intention – of 483 live claims, only 24 had placed a bid in the previous twelve months. One in ten affected households are currently receiving a DHP, despite underoccupation being in place for over four years, accounting for more than a third of ongoing DHP expenditure. More than half of those contacted by the HomeSwapper team have stated they are not interested in alternative accommodation and are happy with their current home. It was also established that recipients were disproportionately single without dependant children (75%) and lacking indications of severe disability (95%). One in three, predominantly those with a single occupant, were underoccupying their property by two or more bedrooms. In contrast, by January 2018 there were 3,831 households on the Housing Register who were living in overcrowded conditions from a total waiting list of 6,269 (61%).
- 3.6 The Council have sought to pilot these principles within the current policy with repeat Benefit Cap claimants from July 2017. Where claimants engage and make positive steps towards obtaining skills and committing to personal budgets, awards have been extended on a case by case basis. Unless circumstances are exceptional a failure to engage during the period of the award will result in the cessation of discretionary support. Initial findings of 128 cases reviewed are encouraging – 1 in 6 have moved off the benefit cap, half of which is due to finding work, whilst only 1 in 10 have requested any additional support following their initial award.
- 3.7 Key elements of the discretionary policies from 2018/19 are as follows:
- a) Newly under occupied or Benefit Cap households who claim a DHP will receive a 13 week transition award whilst they seek support and consider other options.
 - b) The requirement to commit to downsize to affordable accommodation will be expected from the point of claim for repeat underoccupied tenants, unless exceptions apply. To do this they must enrol on the Housing register and undertake realistic bidding, or consider exchanging their property via HomeSwap. Underoccupied households who have not previously sought assistance will continue to receive a thirteen week grace period before conditions are applied.
 - c) All claimants will be offered the opportunity to receive budgeting advice from our contracted social welfare advice provider.
 - d) Unless exceptions apply, all repeat awards will be subject to consideration of a taper. Reducing the DHP gradually, over a period, will help to ease the recipient into managing the rent shortfall themselves with the support of budgeting advice.

4. Council Tax Discretionary Relief (CTDR)

- 4.1 CTDR expenditure has risen by 25% annually for the past three years, to approximately £360,000 in 2017/18. We anticipate further, but more modest increases, from 2018/19 onwards. It is anticipated demand will continue to mirror DHP applications as above. This fund is to help mitigate impacts within local taxation and help households pay their council tax. The Council has committed £500,000 for this purpose towards the non-statutory Council Tax Discretionary Relief (CTDR) fund.
- 4.2 Expenditure for 2017/18 is expected to be less than £400,000. We anticipate take up for 2018/19 remains within current spend parameters. We will continue to promote the use of this fund to maximise takeup and ensure vulnerable households are protected.

5. Community Support Grants (CSG)

- 5.1 There are two elements which make up the Community Support Grants, including crisis and support. Crisis Grants cover emergency situations including food parcels, clothing and fuel. Support Grants cover the provision of items to enable applicants to remain in their home, such as furniture, carpets and white goods.
- 5.2 CSG expenditure has remained stable over the past three years at approximately £250,000 per year and is funded from limited Welfare Reserves. Future sustainability has been embedded in the delivery plan for 2020.
- 5.3 In 2016/17 we received we received 1,077 CSG applications or 21 per week. This has continued into 2017/18. The annual CSG budget is £535,000, and expenditure is expected to be £250,000. From 2018/19 crisis spend is anticipated to increase with the introduction of Universal Credit, and could triple based on the experience of other Councils. We are working with our commissioned partners and through our Universal Credit Equality Impact Assessment to plan for this demand spike.

6. Risks

- 6.1 There are number of risks associated with this change of policy and fund management. A risk log has been created which will be monitored by the Director of Finance and the Lead member for Welfare Reform. The main risks have been identified as:
- a) Demand will outstrip the DWP DHP grant / Council funding;
 - b) The review of the DHP caseload fails to realise projected budget reduction;
 - c) Demand for budgeting support or Housing Advice outstrips capacity;
 - d) Where under-occupancy applies, and the tenant is seeking to move, the market fails to respond to demand;

- e) DWP loans fail to be granted to welfare benefit claimants;
- f) Introduction of third party referrals significantly increase take up;
- g) BIC numbers rise greater than DWP prediction creating a higher demand.

We consider these risks to be adequately mitigated by the changes outlined above.

7 Financial, Legal and other Implications

7.1 Financial Implications

Changes to benefits are having, and will continue to have, a direct impact on the incomes of those who depend on such income. Those in exceptionally difficult circumstances may apply for discretionary funding which the Council administers. These include:

(a) a council tax discretionary relief (hardship) fund, initially intended to assist those having to pay a proportion of their council tax for the first time. The budget for this fund is £500,000 in 17/18 and is part of the Council's normal budget;

b) discretionary housing payments, for which the budget in 17/18 is £1,186,000. This budget is directly supported by government grant, which is expected to reduce in future years as described above. Demand for this support has, however, been increasing;

(c) community support grant, originally funded by a grant from the DWP which has now ceased. The Council has sustained the programme having saved various related underspends in a reserve specifically for this purpose. The budget for 2017/18 is £535k, funded from this reserve. The amount held in the welfare reform reserve fell from £4.5m to £4.1m as at 1st April 2017, and will eventually be fully spent. It is possible to increase the annual budget, but this will result in the reserve being spent sooner. Decisions on the amount to spend are taken as part of annual budget deliberations."

This report sets out options to reduce the ongoing costs to the Council and to influence/drive certain behaviours by actual and potential claimants / recipients of support.

Colin Sharpe, Head of Finance, ext. 37 4081

7.2 Legal Implications

From 2013, Upper Tribunal decisions have imposed increased reliance on DHPs to justify the legality of otherwise potentially discriminatory legislation. As a result, LAs have new duties to fulfil, as DHPs are tied ever closer to the operation of HB (& UC) regulations. All three discretionary policies have an objective 'to avoid disability or other unlawful discrimination.'

Conditions should only be applied to cases in which it is appropriate to make a conditional award. It may be potentially discriminatory to time-limit awards, and to insist on registration with rehousing schemes for claimants who would otherwise face potential Article 14 discrimination, in particular those resident in accommodation substantially adapted to disability needs (Rutherford) and households containing a disabled person with an ascertained need for an additional bedroom (Rutherford) including those unable to share a bedroom due to disability (Grisham). R (Hardy) v. Sandwell MCB (2014) also established that disability-related income should not be considered available for rent expenditure in assessing Discretionary Housing Payment entitlement.

In dealing with the allocation of the DHP over the course of a financial year the Council needs to bear in mind the risk of challenge based on fettering of discretion. We have been given an express power to top-up the Government grant by up to 2.5 times. Whilst this is not a duty, it is a power and a blanket refusal to exercise a power would most likely be rendered unlawful. This should be borne in mind if, for example, the earmarked DHP monies are spent before the year ends. Failing to entertain applications, contrary to both our own policy and DWP Guidance might lead to an accusation of having fettered our discretion.

The Council has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination of people sharing protected characteristics which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. There is also a duty to promote equality of opportunity and foster good relations between those sharing a relevant protected characteristic and those who do not do so.

Kamal Adatia, City Barrister & Head of Standards. Ext. 37 1401

7.3 Climate Change and Carbon Reduction Implications

There are no significant climate change implications arising from the recommendations in this report.

Duncan Bell, Senior Environmental Consultant. Ext. 37 2249

7.4 Equalities Implications

The report provides information, highlights concerns and outlines options regarding the Council's Discretionary Housing Payment (DHP), Council Tax discretionary Relief (CTDR) and Community Support Grant (CSG). Those affected by the changes will be those households who are in receipt of either housing benefit or Universal Credit with a Housing Costs element. There will be services users from across all protected characteristics affected by the changes proposed, however there are some protected characteristics such as disability, gender and age which are most likely to be disproportionately affected should funds be exhausted due to increased and sustained demand.

The Public Sector Equality Duty (PSED) which is part of the Equality Act 2010 expects us to show due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations. Our public sector duty expects us to demonstrate how we do this. The Equality Impact Assessment appended to the report should include the information and evidence that is used to inform the proposals, what impacts have been identified and for who and how any disproportionate negative impacts will be mitigated. If mitigating actions aren't identified or implemented where a disproportionately negative impact has been identified, we will not have met our statutory duty and, therefore, it is important to assign responsibility to an individual and a timescale for having implemented any actions that are identified.

The proposed introduction of explicit protection for households where there has been an adaptation due to a disability or long term health condition, for vulnerable tenants (placed under the homelessness duty), for families who are engaging with the Early Help Family Programme and looked after children aims to ensure that those who would be most negatively affected, if the fund were to become exhausted due to increased and sustained demand, are protected. The steps taken to ensure support for these protected groups will help us to meet the aim of eliminating unlawful discrimination.

The Equality Impact Assessment which is appended to the report outlines improvements to the collection of equalities data. More information about the protected characteristics of those making applications, both successful and unsuccessful, will allow meaningful analysis of the actual equalities implications of the implementation of the policy and will allow equalities considerations to inform the review of the policy and procedures in the future.

Hannah Watkins, Equalities Manager. Ext 37 5811

8. Other Implications

N/A.

9. Summary of Appendices

Appendix One: Discretionary Policy documents 2018/19.

Appendix Two: Equality Impact Assessment & Statistical Analysis

For further information on Welfare Reform Impacts – see report to Scrutiny Commission October 2016:

<http://www.cabinet.leicester.gov.uk:8071/documents/s79047/Welfare%20Reform%20update%20-%20JTy.pdf>

For existing Discretionary Policies, please see:

<http://www.leicester.gov.uk/media/180408/discretionary-housing-payments-2015-18.pdf>

<http://www.leicester.gov.uk/media/180407/council-tax-discretionary-relief-policy-2015-18.pdf>
<http://www.leicester.gov.uk/your-community/benefits-and-support/housing-benefit/community-support-grant/>

13. **Is this a private report (If so, please indicate the reasons and state why it is not in the public interest to be dealt with publicly)**

No.

14. **Is this a “key decision”?**

No.

15. **If a key decision please explain reason**