



Executive
11 February 2013

Report from the Deputy Director of Finance

For Decision

Wards:
ALL WARDS

Local Welfare Assistance Scheme for Brent

1. Summary

1.1 This report sets out:

1.1.1 A recommended scheme for Local Welfare Assistance payments replacing the previous provision of similar services via Job Centre Plus and administered through the Department for Work and Pensions, and taking account of the outcomes from the recent public consultation process.

1.1.2 The findings and outcomes of the consultation arrangements for the proposed Local Welfare Assistance Scheme carried out over a five week period between 6th December 2012 and 11th January 2013.

1.1.3 The financial and equality impacts of the recommended Local Welfare Assistance Scheme for Brent residents.

1.2 A summary of the background and government proposals are set out in this report.

2. Recommendations

2.1 The Executive are asked to consider and approve the following recommendations:

2.1.1 To approve and authorise the making and implementation of the recommended Local Welfare Assistance Scheme as set out in section 5 of this report by 31st March 2013 and utilising the non-ring-fenced government funding provision in full.

;

2.1.2 To consider and note the findings on equalities and other impacts arising from the proposed scheme as set out in Section 5 of this report.

2.1.3 To delegate authority to the Deputy Director of Finance to finalise the full scheme documentation by 31st March 2013 in accordance with the principles of the proposed Local Welfare Assistance Scheme as set out within this report.

3. Executive summary

3.1 Under Government welfare reforms, the existing discretionary elements of the Social Fund (i.e. Crisis Loans and Community Care Grants) administered by the DWP through Job Centre Plus, are to cease with effect from 31st March 2013.

3.2 Local Authorities have been given a discretionary power to provide localised provision as an alternative with funding attached as set out in paragraph 8 of this report. The funding represents a reduction of £128,891 (i.e. 13%) in comparison to 2011/12 levels.

3.3 The consultation was carried out using a range of approaches and publicity. These included online consultation questionnaires and face to face meetings with existing Social Fund customers at Job Centre Plus offices.

3.4 The proposed Brent scheme retains many of the features of the current DWP scheme, but in order for expenditure to reduce in line with the reduced funding provision, the proposed scheme incorporates a number of key features including but not limited to the following:

3.4.1 A reduction in the maximum number of awards that can generally be made for Crisis Payments (excluding disasters) in any year to 2 and the introduction of a cap of 2 for community care grant payments also;

3.4.2 A reduction in the maximum period for which day to day living expenses are met under crisis payments from 14 to 7 days.

3.4.3 A provision for the Council to make reduced payments or no payments where it appears that the funding budget may be exceeded;

3.4.4 An award of a Crisis Payment shall be considered only where the applicant is in receipt of a qualifying benefit unlike at present where the application may be made by anyone.

- 3.5 It has been difficult to develop and model the effects of the above due to the absence of detailed data concerning the existing DWP administered scheme. However, it is proposed that further refinements may be made to the scheme over time as a consequence of experience and with due regard to the effects of other economic factors.

Background

4 Government proposals and main principles

- 4.1 The government has made provision within the Welfare Reform Act 2012 for the discretionary elements of the existing Social Fund scheme administered by the DWP to cease and for any future provision to be administered by Local Authorities.
- 4.2 Local Welfare Assistance Schemes can be funded by a non ring-fenced grant provided by the Government. For 2013/14, this equates to £855,509. The fixed grant will result in an immediate reduction to funding of £128,891 when compared to 2011/12 levels of expenditure.

5. The Proposed Local Welfare Assistance Scheme

- 5.1. The Council's proposed scheme retains many features of the existing DWP provision, including the two main categories of payments – Crisis Payments, for applicants unable to meet their immediate short term needs in an emergency or as a consequence of a disaster. They are awarded for immediate living expenses in order to avoid serious damage or risk to the health or safety of the applicant or a member of the family, and Community Care Payments, primarily intended to help vulnerable people live as independent a life as possible in the community.
- 5.2 The Council undertook consultation concerning its proposed draft scheme that was referred to as a Brent Community Assistance Payment Scheme at that time and which comprised the key principles set out below:

Principle 1: Crisis Payments should be directed to those most in need

The proposed criteria for qualifying for a Crisis Payment are intended to direct support to applicants in receipt of means tested benefits such as Income Support, Job Seekers Allowance (Income Based), Employment Support Allowance (Income Related) and Universal Credit. Child Tax Credit and Working Tax Credit are also included within this definition. The existing national scheme does not require Crisis Payment applicants to be in receipt of such benefits.

Principle 2: Crisis Payments should not exceed their budget

Crisis Loans under the existing DWP national scheme are generally limited to three in a year for day to day living expenses. The proposal is to

limit applications for Crisis Payments within Brent to only two in any rolling 12 month period with the second payment contingent upon the satisfaction of any reasonable conditions specified by the Council when the first payment was made.

Crisis Payments for living expenses shall be limited to 7 days rather than the 14 days (or more in certain instances) generally applied under the existing DWP administered national scheme.

The maximum amount of any Crisis Payment for day to day living expenses shall be capped at 60% of the Council Tax Support (CTS) personal allowance for the relevant financial year in relation to the period concerned for the applicant and any partner if applicable and 100% of the CTS personal allowance applicable for any dependent children.

Where it appears that the budget for crisis payments may be exceeded, either a lower payment or no payment may be authorised.

Principle 3: Community Payments should be directed to those most in need

The existing DWP scheme requires Community Care Grant applicants to be in receipt of a qualifying benefit such as Income Support. The Brent proposal is to retain this principle but also include Universal Credit as one of the qualifying benefits.

In the existing DWP scheme, all capital above £500 (£1000 in the case of applicants of pensionable age) is taken into account to offset against the community care grant application. Brent Council proposes to take into account all capital above £400 for non pensioners and £800 for pensioners. This includes the capital of any partner in the case of a couple (i.e. married, living together as husband and wife, a civil partnership or living together as a civil partnership).

Principle 4: Community Payments should not exceed their budget

An applicant must not have had more than two awards of a Community Payment in any rolling twelve month period excepting in exceptional circumstances. (e.g. moving home)

Where it appears that the budget for crisis payments and community payments may be exceeded, either a lower payment or no payment may be authorised.

Principle 5: Wherever reasonably practicable, an award under the proposed scheme should be made other than by cash

The proposal is to make payments under the new arrangements other than by cash wherever reasonably practicable. This may include for example food vouchers or a pre-paid card that can be restricted in terms of what it is spent on to minimise the potential for abuse of the scheme. This will help to ensure that payment awards made are used for the purpose intended. The current intention subject to approval of the scheme is to provide customers with a pre-paid payment card that may be used at

an automatic teller machine (ATM) and which may, subject to prior Council approval, be converted into cash at the ATM for certain types of award where a pre-paid card would not be appropriate. For example, a payment made in relation to an electricity meter.

Principle 6: There should be a provision for repayment of any awards made where fraud or applicant error occurs

As payments made under the proposed scheme are intended to provide support to those in genuine need, any fraud or applicant error that arises may prevent someone else receiving assistance to which they are entitled. It is therefore proposed that where fraud or applicant error occurs, repayment will be sought from the applicant.

- 5.3 The proposed scheme is based on the above set of principles, with accompanying technical mechanisms to achieve each principle, and represents a number of variations to the existing DWP administered scheme arrangements.
- 5.4 It is also proposed that the following eligibility provisions apply for crisis payments and community payments respectively:

Crisis Payments Eligibility

- *A claimant must be aged 16 or over*
and
- *must have their sole or main residence in Brent (or be intending to have their sole or main residence in Brent in the case of circumstances such as moving to the area as a result of domestic violence or discharge from prison for example)*
and
- *must be in receipt of a qualifying benefit (or about to be in receipt of a qualifying benefit (This means Income Support, JSA(IB), ESA(IR), Pension Credit, Universal Credit, Working Tax Credit and Child Tax Credit or a payment made on account of one of them, (Note: The provision concerning “about to be in receipt of a qualifying benefit” shall be defined to make provision for cases such as where a person is homeless or fleeing domestic violence for example and has not yet claimed or received a qualifying benefit). This provision shall not be required to apply in the case of a “disaster situation” however to align with the relaxation of the “immigration control” requirement.*
and
- *must not be an excluded person as currently defined for the purposes of Direction 15 of the existing Social Fund Guide and further indicated within the notes below*
and
- *must not have access to any funds (including insurance) that can be relied on to meet the need they are applying for support with and where they would be left with insufficient resources which would cause serious risk to their own, or their family’s health or safety*

- and
- *they must not have already had two awards for a Crisis Payment in any rolling 12 month period excepting in the case of a move of home (this also excludes payments for “disasters”)*
- and
- *In the case of a second payment application, must be able to demonstrate compliance of any reasonable conditions specified by the Council when the first payment was made*
- and
- *must not be a person subject to immigration control¹*
- and
- *must not be eligible (or in receipt of as the case may be) for an Advance of Benefit payment from DWP*
- and
- *must not have been found guilty in a UK court of law for making a fraudulent application for a Brent Community Assistance Payment or Council Tax Support / Housing Benefit / Council Tax Benefit within the past twelve months (or accepted an administrative penalty as an alternative to prosecution)*
- and
- *must not be seeking support to pay for an excluded item*
- and
- *must be willing to comply with any reasonable conditions concerning the payment award including for example, support from advice agencies (or similar) to address any financial capability issues or on-going difficulties*

Important Notes

The following key points are of relevance to the proposed L B Brent Scheme for Crisis Payments:

1. The existing DWP scheme does not require Crisis Payment applicants to be in receipt of a qualifying benefit as it does for Community Care Grant applicants. However, the funding reduction for operating a local scheme means that local support needs to be targeted accordingly. To this extent, it is proposed that it be directed to persons in receipt of the specified means-tested benefits.
2. DWP currently limit the number of Crisis Loans for day to day living expenses to three in a year. The proposal is to limit applications for Crisis Payments to only two in any rolling 12 month period with the second payment contingent upon the satisfaction of any reasonable conditions specified by the Council when the first payment is made.
3. Crisis payments are currently made in the form of a loan under the existing DWP scheme and recovered via Benefit entitlement. The cost of recovering generally low value amounts via an invoicing procedure would be uneconomical for the Council to pursue and for this reason, it

¹ People subject to immigration control can only claim a Crisis Payment in a disaster situation

is intended that such payments should be made in the form of a grant that should be repayable if they are subsequently made good by virtue of a payment under an insurance policy for example.

4. The definition of an excluded person within the existing Social Fund eligibility criteria is proposed to be extended to include an applicant that lives at home with their friends or family excepting where they have a commercial rent liability and / or Council Tax liability for the premises concerned. This provision will also not apply to an applicant that lives at home with their friends or family but who is at genuine risk of homelessness or where other statutory considerations may apply such as Child Protection matters.

5. All capital reasonably available to the applicant should be taken into account to offset against the claim application. This shall include the capital of any partner in the case of a couple (i.e. married, living together as husband and wife, a civil partnership or living together as a civil partnership).

6. There should be a provision for recovering payments made under the scheme where fraud or claimant error is involved or where the claimant subsequently receives a payment towards the items concerned perhaps as a consequence of an insurance claim being settled. Where a crisis grant is subsequently repaid, the number of awards treated as made to the claimant concerned shall be reduced by one for the purposes of the scheme.

7. A Crisis Grant towards emergency travel expenses where the applicant is stranded away from home shall not be payable where the travel is in consequence of a business trip, holiday, vocation or other similar type of absence from their sole or main residence in Brent. The scheme should therefore specify the types of circumstances where they may be payable rather than the instances where they are not.

8. The maximum amount of any Crisis Grant for day to day living expenses where the applicant and / or their partner is liable for rent, accommodation charges in a hostel or board and lodging, Council Tax (or would be liable if the dwelling were not exempt), shall be capped at 60% of the Council Tax Support (CTS) personal allowance for the relevant financial year (i.e. 1st April to 31st March) in relation to the period concerned for the applicant and any partner if applicable and 100% of the CTS personal allowance applicable for any dependent children.

9. Where the applicant resides in the home of a relative, friend or other person, the maximum amount shall be capped at 30% of the CTS personal allowance for the relevant financial year in relation to the period concerned. (It should also be noted here that currently, applicants that have not attended a work focused interview or are disallowed or sanctioned jobseekers, have their maximum amount

calculated using the single personal allowance rate for the applicant rather than any couple rate).

Community Care Payments – Eligibility

- *The claimant must be aged 18 or over (16 or over in certain circumstances)*
and
- *must have their sole or main residence in Brent (or be intending to have their sole or main residence in Brent in the case of circumstances such as moving to the area after leaving prison for example)*
and
- *must be in receipt of a qualifying benefit² (or about to be in receipt of a qualifying benefit)*
and
- *must not have capital in excess of £400 for persons not of pensionable age and £800 in the case of persons of pensionable age. (Any amount above these levels will be netted off against any award entitlement)*
and
- *must not be a person subject to immigration control*
and
- *must not be eligible (or in receipt of as the case may be) for an Advance of Benefit payment, Budgeting Loan or Budgeting Advance from DWP that could meet the need*
and
- *must not have been found guilty in a UK court of law for making a fraudulent application for a Brent Community Assistance Payment or Council Tax Support / Housing Benefit / Council Tax Benefit within the past twelve months or accepted an administrative penalty as an alternative to prosecution*
and
- *must not be seeking support to pay for an excluded item³*
and
- *must be willing to comply with any reasonable conditions concerning the payment award including for example, support from advice agencies (or similar)*
and
- *must not have had more than two awards of a Community Care Grant in any rolling twelve month period excepting in exceptional circumstances. (e.g. moving home)*

² Income Support, income-based Jobseeker's Allowance, Employment and Support Allowance (income-related), Pension Credit, Universal Credit or payment on account of one of them, or you are due to leave an institution or care home within 6 weeks, and are likely to get one of those benefits or entitlements on leaving.

³ The DWP has a long list of excluded items including: work items, school uniforms, court costs, repairs to social housing properties, council tax/water/fuel, medical items, most housing costs, debts, anything the council has a duty to provide, daily living expenses, telephony costs.

Important Notes

The following key points are of relevance to the proposed Scheme:

1. The existing DWP scheme requires Community Care Grant applicants to be in receipt of a qualifying benefit. The proposal is to include Universal Credit as one of the qualifying benefits.
2. In the existing DWP scheme, all capital above £500 (£1000 in the case of applicants of pensionable age) shall be taken into account to offset against the claim application. This shall include the capital of any partner in the case of a couple (i.e. married, living together as husband and wife, a civil partnership or living together as a civil partnership).
3. There should be a provision for recovering payments made under the scheme where fraud or claimant error is involved.
4. Council officers assessing applications will check whether there is any entitlement to funding from other discretionary funds available to the Council as a matter of course to ensure a co-ordinated service for the applicant.
5. The Council proposes to provide items and support in-kind wherever reasonably practicable in order that assistance is properly targeted and to ensure that best use is made of the cash limited grant funding.

- 5.5 The provision of a local scheme may be achieved through the following means:

- In house,
- Private company,
- Voluntary sector e.g. Credit Union
- Mixed provision – In house and private company.

It is anticipated that in the timescale available for implementation and with due regard to the potential risks arising from implementation of a local scheme, the latter three options above are not currently feasible but may be considered as part of a review of the service.

- 5.6. Methods of applying for assistance are proposed to be via an online application form, by telephone or face to face in the case where the two former means of application are not appropriate for the customer concerned. It is also proposed that authorised third party representatives be able to make customer referrals for consideration using an online referral process where such arrangements have been agreed in advance.
- 5.7 The DWP's existing Social Fund scheme provides for limited access to support out of hours. It is currently understood that that this provision is generally only accessed by the Police or by local authority Emergency

Social Work teams. In London, in the last year for which DWP statistics are available, 170 loans / grants were paid out of hours equating to less than one per month for each local authority area.

- 5.8 In view of the very low numbers concerned as outlined in paragraph 5.7, the proposed scheme does not provide for an out of hours' service. However, this will be kept under review and may be reconsidered in the future should demand and experience indicate a potential requirement for it.
- 5.9 The use of pre-paid cards for awards made is proposed to minimise the need for making cash payments whilst retaining an option in certain circumstances to permit a customer to convert the credit on their pre-paid card to cash in specified situations such as in the case of a payment for an electricity meter for example.
- 5.10 The aim is to ensure that funds are not exhausted prior to the end of the financial year and that those applicants applying later in the year have as good a chance of receiving support if they are eligible as those applying earlier in the year. To this extent, it is proposed that payments may be restricted or ceased where financial circumstances require.
- 5.11 Additional comments were received from the consultation undertaken and these have been set out in Appendix A to this report together with a response in the form of a commentary
- 5.12 Each of the proposed options has been considered with regard to suitability and feasibility as set out in the consultation responses attached as Appendix A2 to this report.
- 5.13 The Council's proposed scheme has been established with due regard to the Council's statutory obligations, consultation responses and in order to attempt to distribute the reduced funding available amongst those claimants most in need of financial assistance. The detailed legal implications concerning these including the public sector equality duty are set out later in this report.
- 5.14 The permutations of options and variations for a Local Welfare Assistance Scheme are almost infinite. However, the proposed scheme is intended as far as reasonably practicable to replicate the existing DWP arrangements to provide for continuity particularly at a time when other welfare reforms are likely to affect similar customers and to minimise the potential for disruption within a constrained timetable. It is also considered that in the timescale available and with reference to software required for supporting such a scheme, a new scheme should be based predominantly on existing arrangements albeit with some changes particularly regarding eligibility to enable the proposed service to be delivered within a reduced funding context. This will enable the Council to meet the anticipated funding reduction of £128,891 in comparison to 2011/12 DWP expenditure levels.

- 5.15 Additionally, as a relatively small number of software companies are competing to offer and implement solutions in local authorities simultaneously and within a short timescale, the potential for wide variations in design is anticipated to be limited.
- 5.16 The proposals set out within this report were considered prior to the consultation process by officers and through discussions with a Member Working Group. These were used to arrive at the proposed draft scheme which formed the basis of public consultation.

6. Consultation Arrangements

- 6.1 The consultation period was from 6th December to 11th January (i.e. 5 weeks) There was no statutory obligation upon the Council to conduct a public consultation, However it was decided that seeking and obtaining views on the proposals would be appropriate and useful in finalising the scheme.
- 6.2 A range of approaches were used to obtain views and comments for the proposals of the Council's Local Welfare Assistance Scheme as set out below:
- All consultation documentation including the questionnaire was available on Brent Council's Consultation Tracker website - www.brent.gov.uk/consultation,
 - Meetings were held with Job Centre Plus representatives from Willesden and Harlesden where Social Fund payments are currently issued to claimants,
 - A pop up screen outlining the nature of the consultation and how to access the online consultation documentation was activated each time one of the Brent public library PC's was accessed by a customer. During the consultation period, there were 3,464 customer sessions where this message was displayed,
 - Letters outlining the consultation arrangements were sent by post / email to 42 organisations including Housing Associations with a property interest in the Borough, welfare organisations, the Police and Probation Service and interest groups to inform them of the nature of the consultation and how they may access the consultation documentation,
 - Letters outlining the consultation arrangements were sent by email to 174 voluntary organisation representatives on 12th December 2012 informing them of the nature of the consultation and how they may access the consultation documentation,

- Letters outlining the consultation arrangements and how to access the consultation documentation were also sent to the three Brent MP's and Chamber of Commerce,
- Council officers engaged with 21 Social Fund customers collecting their Crisis Loan payments from Harlesden and Willesden Job Centre Plus offices over a four day period.

7.0 Consultation Responses – Analysis

- 7.1 The questionnaire used for the consultation was made available on the Council's Consultation Tracker throughout the consultation period and printed copies of the questionnaire were provided to existing Social Fund customers attending the Harlesden and Willesden Job Centre Plus (JCP) offices to collect their payments.
- 7.2 Respondents were asked the following questions:
- To rank in order of importance their preferences for each of the proposed changes,
 - To state whether they agreed or disagreed that each of the proposed changes was fair
 - To add any additional comments to support responses given to the ranking of importance and fairness questions or alternative options that the Council should consider
 - To comment on whether the proposed changes are likely to affect particular individuals or groups more than others and if so, how these may be addressed
 - To provide any other additional comments concerning the proposals
- 7.3 There were 28 consultation questionnaire responses received, comprising 7 online responses (25%) and 21 paper responses (75%).
- 7.4 Additionally, there were comments received from meetings with Job Centre Plus personnel at both Harlesden and Willesden.
- 7.5 The size of the consultation questionnaire response represents 0.38 per cent of the existing annual customer volumes for the Brent area accessing the national DWP Social Fund based on 7,230 applications for Crisis Loans and Community Care Grants for 2011/12. It should also be noted that some respondents only answered part of a question or in the case of free text answers, gave more than one response for consideration. In other cases, no responses were given to a question. Consequently, the weight attached to the results obtained from the responses received should be considered accordingly.
- 7.6 Comments received have been evaluated based upon technical feasibility and suitability in terms of administering the scheme, the potential financial position arising from the funding reduction in comparison with the existing scheme and the Council's obligations and duties under statutory provisions including the Equalities Act 2010.

7.7 Details of the consultation findings have been set out in Appendix A to this report but may generally be summarised as follows:

7.7.1 Details about the consultation on the Local Welfare Assistance Scheme proposals reached a significant number of stakeholders and residents via a range of consultation formats as set out earlier in this report.

7.7.2 The overall response to the consultation was low with only 28 returns despite the efforts made to ensure that residents and stakeholders were aware of the proposals and had an opportunity to comment. Additionally, the response was not representative of the Brent population based upon 2011 census data.

7.7.3 However, there was a majority support for the Council's proposals from the responses that were received in relation to the fairness of the key principles consulted on, with the exception of principle 5 concerning proposed entitlement payments being made other than by cash. This outcome appeared to contrast with respondents ranking of importance for the same principle 5 in question 1 which was perceived to be of low importance from the consultation responses and possibly stems from a misunderstanding of the question concerning the ranking of the most important principles

7.7.4 There also appeared to be a clear distinction that principle 5 (payments to be made other than by cash) was not perceived as fair by existing Social Fund or previous Social Fund applicants. As the respondents concerned are, or have been used to receiving a cheque for their payment, the use of a pre-paid card was not perceived by them as a suitable alternative.

8. Financial Implications

8.1 The government has made provision within the Welfare Reform Act 2012 for the discretionary elements of the existing Social Fund scheme administered by the DWP to cease and for any future provision to be administered by Local Authorities at their discretion.

8.2 Indicative Programme Funding for the proposed scheme will be through a grant to the Council of £855,509 that will be payable each year for 2013/14 and 2014/15. The position regarding funding beyond 2014/15 is not known. This funding is not "ring-fenced" and may be subject to change dependent upon the actual Social Fund expenditure incurred for the Brent Council area during the current financial year ending 31st March 2013.

- 8.3 Additionally, the Council will receive an administration grant of £180,775 for 2013/14 and £165,700 for 2014/15. The position regarding funding beyond 2014/15 is not known.
- 8.4 Set up funding of £8,555.09 will be provided to the Council representing 1% of the Programme Funding allocation.
- 8.5 There are consequential costs arising from the implementation of the proposed local scheme that are expected to exceed the set up funding provision. These include the following:
- Local scheme administration costs
 - Software
 - Consultation costs
 - Legal Service costs

Set up costs are currently anticipated to amount to approximately £73,000 including payment card costs and IT software and are being met through transitional funding available for welfare reform generally. .

- 8.6 The Government has stated that whilst it does not expect Local Authorities to replicate the current Social Fund scheme in whole or in part, it is intended that the funding is to be used to provide the new provision.
- 8.7 Expenditure levels for the discretionary elements of the Social Fund during 2011/12 indicate that £267,500 was incurred for Crisis Loans and £716,900 for Community Care Grants.
- 8.8 Based upon Indicative Programme Funding of £855,509 as set out in 8.2 above, a reduction in overall funding of £128,891 would potentially need to be found from within any local scheme.
- 8.9 It is important to note that provisions currently exist whereby the DWP is able to limit or reject payments in certain instances such as where funding no longer exists or severe financial pressures arise. It is proposed that the Council will incorporate this provision within its local scheme to permit a similar approach to be taken where applicable.
- 8.10 There is no statutory obligation on the Council to provide a local scheme and any scheme that is provided may be funded in part or in full using the Programme Funding available. Additionally, the fund may be “topped-up” using other available Council sources if considered appropriate.
- 8.11 The proposed scheme design as set out in this report has been based principally on the assumption that a localised scheme will be available and that the £855,509 funding provided by the DWP will be spent exclusively for that purpose and without “top-up” funding from other Council funds.

- 8.12 A procurement process has been commenced to obtain the application software necessary to support and administer the provision of a Local Welfare Assistance Scheme.
- 8.13 There is a collaborative procurement currently being investigated by some London Boroughs although average indicative supplier costs appear to suggest a potential cost level higher than that quoted to Council officers in their meetings with market suppliers.
- 8.14 There is also the possibility that a collaborative procurement for a number of authorities could lead to a single supplier having to implement a number of applications across London simultaneously presenting potential resource capacity issues and leading to implementation delays.

9. Meeting the reduced funding level

- 9.1 There are potentially four permutations available concerning a Local Welfare Assistance Scheme and they are as follows:
 - 9.1.1 To provide a Local Welfare Assistance Scheme using part of the programme funding provided by the Government,
 - 9.1.2 To provide a Local Welfare Assistance Scheme using the full amount of programme funding provided by the Government,
 - 9.1.3 To provide a Local Welfare Assistance Scheme and supplement the full amount of programme funding provided by the Government with other Council funds available,
 - 9.1.4 Not provide a Local Welfare Assistance Scheme.
- 9.2 The proposed Local Welfare Assistance Scheme outlined within this report has been developed based upon the assumption that 9.1.2 above applies.

10. Proposed Local welfare Assistance Scheme

- 10.1 The scheme proposed following the consultation process and as outlined within this report is to be delivered within the context of reduced annual funding of £128,891.

Section 5 of this report sets out further details regarding the proposed scheme and section 11 of this report sets out the risks associated with the projected savings.

Table 16

	Scheme Proposals Consulted On	Scheme Proposals Recommended
Principle 1: Crisis Payments should be directed to those most in need	Yes	Yes
Principle 2: Crisis Payments should not exceed their budget	Yes	Yes
Principle 3: Community Payments should be directed to those most in need	Yes	Yes
Principle 4: Community Payments should not exceed their budget	Yes	Yes
Principle 5: Wherever reasonably practicable, an award under the proposed scheme should be made other than by cash	Yes	Yes
Principle 6: There should be a provision for repayment of any awards made where fraudulent or applicant error occurs	Yes	Yes

10.2 There are of course other variants to these potential changes, each with differing impacts.

10.3 Other financial unknowns which may affect the projections stated previously are given in section 11 below. Given the above, it is difficult to quantify with precision the overall financial and business risks or variance for the proposed scheme. Whilst this does incorporate some mitigation for these risks through the scheme principles outlined in this report, it does not eliminate all risks. However, the ability of the Council to make reduced payments or no payments where the scheme budget is likely to be exceeded will provide further mitigation against these.

11. Risks and assumptions of the recommended scheme

11.1 The following risks and caveats have currently been identified:

11.1.1 Expenditure for DWP crisis loan payments is currently offset by any repaid amounts that the DWP may obtain through recovery from prescribed benefits. The precise amounts and volumes of loans repaid are not available to the Council.

- 11.1.2 It is not currently known how many awards are made for the different types of circumstances available or the average award amounts for the items concerned. As there is a risk that the programme funding could be used up before the end of the relevant financial year, eligibility criteria will permit a reduced payment or no payment to be made where it appears that the budget may be exceeded.
- 11.1.3 There is a risk that suppliers either choose not to quote for the Council's IT requirements or are unable to provide the solution required in the specified timescale.
- 11.1.4 The impact of the wider welfare reforms and economic position on future demands placed upon the scheme is unclear.
- 11.1.5 The relatively short timescale remaining for implementation means that any delay in project activities may adversely affect the implementation date that has been assumed to be 1st April 2013.
- 11.1.6. The changes in provision of the scheme from 1st April 2013 with the discretionary areas transferring to local provision and others remaining with the DWP, means that applicants may be unclear as to whether they need to contact the DWP or the Council. Effective communication of the new arrangements will therefore be essential.
- 11.1.7 Applicants ineligible for assistance may visit the Council offices to obtain a review of the decision. In view of the nature of the payments and circumstances of the applicant, there is a potential risk of anti-social behaviour towards Council employees and premises.
- 11.1.8 The volume of responses received from the consultation means that the effectiveness of the data received and the reliability of the findings as they apply to the Brent population overall, should not be interpreted as representative.
- 11.1.9 The absence of detailed equalities data concerning the existing DWP administered scheme makes it more difficult to determine the potential impact of any proposals as it may apply to protected groups within the Brent Council area under the Equalities Act 2010.
- 11.1.10 Any decision by the Overview and Scrutiny Committee to "call-in" of the Executive report in February could delay the implementation of a local scheme beyond the 1st April 2013 proposed commencement date.

- 11.1.11 As the IT software may not be available from the supplier until after the scheme has been determined, it is anticipated that this will not be available for testing purposes until later than normally anticipated. There is therefore a risk that testing and application of the software will need to be conducted in a much constrained timescale and that any issues identified as a consequence may not be resolved within the required timescale thus potentially affecting the 1st April 2013 commencement date.
- 11.1.12 The combined effects of the wider welfare reforms may result in demographic changes to the Brent population and influence customer decisions concerning where they live and work. This could potentially impact upon demand for other services such as schools admissions and housing although any impact may not be apparent until the scheme has been in operation for some time.
- 11.1.13 Government funding for the scheme may not be received prior to the proposed 1st April 2013 commencement date and will require the financial and cash flow implications to be addressed accordingly.

12. Legal Implications

- 12.1 Pursuant to the Welfare Reform Act 2012, Community Care Grants and Crisis Loans for general living expenses (including rent in advance), which are currently administered by the Department for Work and Pensions, will be abolished from April 2013. These loans may be replaced by local provision by local authorities.
- 12.2 Community Care Grants were primarily intended to help vulnerable people live as independent a life as possible in the community. They were awarded to households receiving means-tested benefits such as Jobseekers Allowance. The prime objectives were to:
- help people to establish themselves in the community following a stay in institutional or residential care;
 - help people remain in the community rather than enter institutional or residential care;
 - help with the care of a prisoner or young offender on release on temporary licence;
 - ease exceptional pressures on families e.g. the breakdown of a relationship (especially if involving domestic violence) or onset of a disability, or a calamity such as fire or flooding;
 - help people setting up home as a part of a resettlement programme following e.g. time in a homeless hostel or temporary accommodation; or
 - assist with certain travelling expenses e.g. for funerals of a family member or hospital visiting.

- 12.3 Crisis Loans were intended for applicants unable to meet their immediate short term needs in an emergency or as a consequence of a disaster. They were awarded for immediate living expenses in order to avoid serious damage or risk to the health or safety of the applicant or a member of the family.
- 12.4 In the letter dated 6 August 2012 from the Minister of State for the Department of Work and Pensions (“DWP”) to Chief Executives of local authorities in England, it states that the DWP would provide funding for 2012-13 for discretionary Social Fund spending for local authorities. It adds that local authorities are not expected by the DWP to replicate the previous Community Care Grant and Crisis Loan schemes that have been provided by the DWP and that it is for local authorities to decide how the social provision should be provided in a way that is suitable and appropriate to meet the needs of their local communities. However, the letter adds that whilst the DWP do not want or expect local authorities to replicate the current scheme in either whole or part, it is the intention of the Government that the funding is to be used to provide the new social fund provision. The letter adds that whilst the Government recognises the difficulties relating to the boundary between providing financial support and social services, the DWP expects the funding to be concentrated on those facing greatest difficulty in managing their income, and to enable a more flexible response to unavoidable need, perhaps through a mix of cash or goods and aligning with the wider range of local support local authorities/devolved administrations already offer. The letter summarises that the funding is to allow local authorities to give flexible help to those in genuine need.

Accordingly, the proposed scheme largely replicates the current DWP scheme, with adjustments as previously stated in order to meet financial constraints, in order that local welfare assistance can continue to be directed towards those most in need of this help.

- 12.5 Although there is much case law regarding consultation, the four basic requirements of consultation are set out in the case of *R v Brent LBC ex parte Gunning (1986) 84 LGR 168*, which has been approved by the Court of Appeal in a number of subsequent cases, and they are as follows: (i) consultation must be at a time when proposals are at a formative stage; (ii) that the proposer must give sufficient reasons for any proposal to permit intelligent consideration and response; (iii) adequate time must be given for consideration and response (iv) the product of consultation must be taken conscientiously taken into account in finalising any proposals.
- 12.6 A period of 5 weeks has been applied for the consultation undertaken in this instant which is considered sufficient in the circumstances. The responses received have been evaluated and the detail is included in this report.

12.7 Public Sector Equality Duty

- 12.7.1 The public sector equality duty, as set out in section 149 of the 2010 Act, requires the Council, when exercising its functions, which includes decisions regarding a Local Welfare Assistance Scheme, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic.
- 12.7.2 Direct discrimination occurs if, because of a protected characteristic, a local authority treats a person less favourably than it treats or would treat others.
- 12.7.3 Indirect discrimination occurs if a local authority applies the same provision, criterion or practice to everyone, but it puts those in a certain protected group at a “particular disadvantage” when compared with persons who are not in that protected group. Even if a “particular disadvantage” arises, indirect discrimination does not arise if the provision, criterion or practice can be justified – i.e. if it is a proportionate means of achieving a legitimate aim.
- 12.7.4 The Council must pay due regard to any obvious risk of such discrimination arising in respect of the decision before them. These matters are examined in the EIA.
- 12.7.5 The “protected characteristics” are: age, disability, race (including ethnic or national origins, colour or nationality), religion or belief, sex, sexual orientation, pregnancy and maternity, and gender reassignment. Marriage and civil partnership are also a protected characteristic for the purposes of the duty to eliminate discrimination.
- 12.7.6 Having “due regard” to the need to “advance equality of opportunity” between those who share a protected characteristic and those who do not includes having due regard to the need to remove or minimise disadvantages suffered by them. Due regard must also be had to the need to take steps to meet the needs of such persons where those needs are different from persons who do not have that characteristic, and to encourage those who have a protected characteristic to participate in public life. The steps involved in meeting the needs of disabled persons include steps to take account of the persons’ disabilities. Having due regard to “fostering good relations” involves having due regard to the need to tackle prejudice and promote understanding.

- 12.7.7 The Council's duty under section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions on the provision of a Local Welfare Assistance Scheme,. Due regard to the need to eliminate discrimination, advance equality and foster good relations must form an integral part of the decision making process. When the decision comes before the Executive, Members of the Executive must consider the effect that implementing a particular policy will have in relation to equality before making a decision. An Equality Impact Assessment will assist with this.
- 12.7.8 There is no prescribed manner in which the equality duty must be exercised, though producing an Equality Impact Assessment is the most usual method. The Council must have an adequate evidence base for its decision making. This can be achieved by means including engagement with the public and interest groups and by reference to information and statistics held by the Council and other agencies such as the DWP.
- 12.7.9 Where it is apparent from the analysis of the information that the policy would have an adverse effect on equality, then adjustments should be made to avoid that effect and this is known as "mitigation".
- 12.7.10 The public sector equality duty is not to achieve the objectives or take the steps set out in section 149 of the Equality Act 2010. The duty on the Council is bring these important objectives relating to discrimination into consideration when carrying out its public functions. The phrase "due regard" means the regard that is appropriate in all the particular circumstances in which the Council is carrying out its functions. There must be a proper regard for the goals set out in section 149 of the 2010 Act. At the same time, when Members make their decision on the Local Welfare Assistance Scheme they must also pay regard to countervailing factors which it is proper and reasonable for them to consider. Budgetary pressures and economic and practical factors will often be important. The amount of weight to be placed on the countervailing factors in the decision making process will be for Members of the Executive to decide when it makes its final decision.
- 12.7.11 The detailed Equality Impact Assessment for the proposed Local Welfare Assistance Scheme is set out in Appendix B to this report. A summary of the main points is set out below.

- 12.8 The overall response to the consultation conducted was low with respondents not answering all questions or giving more than one response to a single question. Additionally, as the majority of the respondents were existing Social Fund customers, the results are biased accordingly. The analysis of the consultation responses in demographic terms also indicates that these were not representative of the Brent population as a whole.
- 12.9 Data available from the existing DWP national scheme is limited and cannot be relied upon for application to the Local Welfare Assistance Scheme proposed for Brent which uses different principles and is a new scheme. Consequently, the weighting applied to the data and responses received must be considered accordingly.
- 12.10 There is no current evidence available to suggest that a group or groups are likely to be adversely affected by the proposed scheme which will be based upon financial circumstances and need subject to meeting proposed qualifying criteria as set out within this report. The proposed new scheme is constructed so as to ensure that those most in urgent need with the least financial resources are eligible under it. The scheme includes the young, the elderly and people with disabilities. The arrangements for making the funds known and available will also ensure accessibility by those persons in the greatest need. It is anticipated that the proposed scheme may facilitate a greater take up from some groups than at present for the national DWP scheme. For example, persons of pensionable age do not generally visit Job Centre Plus offices and may therefore have less awareness of the Social Fund scheme available. The proposed Council scheme will be promoted locally and therefore is likely to have a wider awareness across the Borough than at present
- 12.11 The budget provided to the Council for this scheme is considerably lower than that which was made available to the DWP and accordingly the financial constraints are a factor in the scope of the new arrangements.
- 12.12 The recording and monitoring of data will be essential to enable a full review of the new service to be conducted within the first six months of implementation and to permit any revisions of the scheme to be considered and implemented accordingly. The proposed scheme will therefore need to make due provision for this within the scheme documentation to be finalised by 31st March 2013.

13. Timetable of Events

- 13.1 The timescales for approval and implementation of the Local Welfare Assistance Scheme are extremely tight. There has been little national or local publicity regarding the changes to date despite the existing arrangements ceasing on 31st March 2013.

- 13.2 If the Council's Executive is unable to agree a Local Welfare Assistance Scheme in sufficient time, the implementation of it may be delayed beyond the 1st April 2013 proposed commencement date which is timed to coincide with the cessation of the existing DWP provided scheme thereby creating a potential vacuum for customers experiencing a financial crisis or seeking to remain or move into the local community.
- 13.3 The timetable available for implementation of the scheme would ideally permit scheme design, specification and procurement of appropriate software and training of personnel to be undertaken prior to commencing annual billing for Council Tax and the annual year-end process. However, this sequence of events will not be possible for a local scheme under the current deadline.
- 13.4 A timetable of key dates leading to full implementation of the scheme is provided as Appendix C to this report.

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Appendices

Appendix A – Consultation Report
Appendix B – Equalities Impact Assessment
Appendix C – Timetable of Key Events

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