



**Wirral MBC**

**Report - On-site review of  
Discretionary Housing Payment claims  
20 – 23 February 2017**

30<sup>th</sup> March 2017

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## 1. Introduction and Background

In the light of the decision in the High Court *R v. Sandwell MBC, ex parte Hardy* which concerned how disability living allowance – care DLA(C) and personal independence payment – daily living PIP(DL) should be treated when considering a DHP, Wirral -

- reviewed all DHP decisions for the period April 2015 – September 2016 where there was disability related income and where a DHP had either not been awarded or there was only a partial DHP award,
- discussed their disability related expenditure in telephone conversations with the claimant or their representative,
- reviewed the disability related expenditure for the DHP decisions for each of the cases for the period April 2015 – September 2016, and
- decided whether to –
  - award a DHP where none had been awarded previously,
  - increase an existing award, or
  - leave the original decision unchanged.

Wirral requested LADL to provide an independent review and audit of DHP claims that had come within the scope of the above review. LADL understands that 126 claimants responded of which 84 were reviewed by LADL.

## 2. Process of LADL review

2.1 Wirral MBC has asked LA Directories (LADL) to examine 84 DHP decisions and provided –

- a list of the affected cases and paper copies of the original DHP claim form / forms,
- any relevant documentation and evidence supporting the DHP request,
- the original DHP worksheet (including the comparison between income and outgoings, and the revised decision whether to award / increase the DHP and the reasons for the decision),

- information received during the telephone / email conversation with the claimant or their representative, and
- the decision letter to the claimant.

2.2 Wirral also provided copies of DHP guidance documents.

2.3 Any queries which necessitated interrogating the Benefit system were raised with LA staff responsible for the DHP Review.

2.4 LADL has reviewed the supplied paperwork and considered whether -

- the DHP decisions are consistent,
- HB officers have documented the reasons for their decisions, and
- the decisions were made in accordance with the relevant legislation and local procedures regarding disability-related expenditure (DRE)

2.5 LADL has assumed that the Income figures were taken from the HB claim and are correct and that Wirral has already considered whether HB had been correctly calculated e.g. 13 weeks' protection where claimant could previously afford the rent, 52 weeks' protection following a death, exemption from the single room rate.

2.6 The length of DHP award has not been considered as part of this exercise.

### 3. Findings

3.1 Wirral's own review was thorough and represented a positive response to the issues raised in the Sandwell case. Overwhelmingly, it is clear from the review exercise that Wirral are taking proactive and positive steps towards ensuring that claimants who apply for a DHP and who receive one or more disability benefits are not disadvantaged by the decision-making process.

3.2 Many positives were taken from the review, good practice is shown by some decision-makers in clearly documenting the reasons for their decisions.

3.3 The 84 cases examined demonstrated that HB officers had been proactive in assisting claimants to identify and explain any additional disability related expenses that they had.

3.4 The "DHP review exercise – telephone /email contact" form confirmed the information that had been gathered and was a useful cross reference to the DHP worksheet.

3.5 Guidance for HB officers includes information about national / typical living costs and utility bills.

3.6 DHP Worksheets were completed to record the approach taken on individual cases which were reviewed as part of the LADL Audit.

3.7 In most cases, it was found that HB Officers correctly use their discretion in relation to the calculation of expenditure, for example, food and utilities. However, there appears to be some inconsistency in recording the source of the figures used on the worksheet.

- 3.8 When considering the treatment of DLA(C) / PIP(DL) Wirral are mindful of the findings in the High Court case *R v. Sandwell MBC, ex parte Hardy*. Both DLA(C) / PIP(DL) may be included as income in the comparison of income and outgoings, where this is the case any care related costs are included as outgoings.

## 4. Observations

As a result of this exercise, LADL has identified some areas of policy, procedure and documentation, which it is recommended that Wirral review.

- 4.1 The worksheet completed to support the DHP decision could be enhanced to include further guidance, the automatic calculation of income and expenditure and the reason for the shortfall e.g. ineligible service charge, size criteria restriction or the Benefit Cap.
- 4.2 Adopt a common approach on how the figures that are to be used in the calculation of income and outgoings are recorded, as it is sometimes difficult to see on the worksheet what has been included in the total and what has not.
- 4.3 Remind DHP decision makers of the need to record the reasons and the reasoning of the decision taken and develop a common approach to the recording of decisions.
- 4.4 In some cases, assumptions were made about expenditure that had not been mentioned by the claimant, for example, in one case expenditure for clothing was allowed despite not being listed by the claimant. Whilst LADL are of the opinion that it is good practice in some cases to make assumptions, there did not seem to be any consistency about when this might, or might not be, done.
- 4.5 LADL takes the view that there is some justification for paying a DHP even where it appears that (on paper) the claimant can afford to pay the shortfall. It could be argued that a person needs to have at least some additional income as a buffer in case of unexpected / emergency costs. Such a decision would need to be made on a case by case basis as different household types will have very different needs.
- 4.6 Whatever decision is made; it must be based on facts, be reasonable in the circumstances of the individual case, not be discriminatory and must comply with equalities legislation. A case by case decision needs to be made and any blanket decisions avoided regarding the comparison of income and outgoings. Whilst Wirral's guidance supports this approach it appears not to be the approach taken by some DHP decision makers, which may be more to do with the lack of recording the reasons for decisions or may indicate a training need or confidence issue.
- 4.7 Whilst there is no legal equivalent for the disregard of PIP(M) to the disregard of DLA(M) from any means test, Wirral should carefully consider the principles of the Sandwell decision and the Human Rights and Public Law issues that may arise before deciding to take this payment into account in the financial assessment for DHP. LADL found that although DLA(M) / PIP(M) is correctly not included as income in accordance with Section 73(14) of the Social Security Contributions and Benefits Act 1992, it is, in the opinion of LADL, incorrectly deducted from any disability related travel expenses.

For example - DLA(M) / PIP(M) = £21.80; Travel costs = £42, only £20.20 is allowed as an outgoing for travel costs (£42 less £21.80).

- 4.8 Review policies around the inclusion of DLA / PIP as income and payments of arrears of these incomes as a capital resource when considering whether or not to award a DHP; consider why HB / CTR schemes disregard these benefits as income and the arrears as capital for a period of 52 weeks.
- 4.9 DHP Policy and guidance are brought together into one policy and guidance document – LADL understands that there is a system of hyperlinking to the individual documents from the Document Imaging System, which is still possible by hyperlinking to headings within a larger document.
- 4.10 Bring forward plans to hyperlink guidance between the Document Imaging system to relevant guidance in The Benefits Directory (TBD);
- 4.11 In two cases examined there appeared to be an assumption that the non-dependant could make some contribution. There is no statutory duty NOT to take account of a non-dependant's income for a DHP claim where the claimant / partner receives DLA(C) / PIP(DL), indeed the DWP guidance and Wirral's own guidance state that consideration may be given to whether it is reasonable to contribute towards the shortfall. Based on the principles of the judgement in the Sandwell case the LA may need to consider whether it is likely to be in breach of Public Law and/or Human Rights if it routinely assumes that a non-dependant who receives DLA(C) / PIP(DL) is able to contribute towards the shortfall in rent where the reason for the DHP claim is due to the size criteria reductions in HB
- 4.12 There were a few cases where couples were unable to share a bedroom. These were not reviewed as it is understood that Wirral will be reviewing these when DWP produces the legislation resulting from the recent Supreme Court decision (Carmichael and Rourke).
- 4.13 Since the review was completed, The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017/213 have been laid and are coming into effect from 1<sup>st</sup> April 2017. The DWP have also produced HB circular A3/2017, which announces new legislation from 01 April 2017 to extend the allocation of an additional bedroom under the size criteria rules for both private and social sector tenancies where a couple are unable to share a bedroom due to the 'physical' or 'mental' disabilities of one or both of them.

LADL thank Wirral for providing [REDACTED] with suitable accommodation to carry out the review, the provision of necessary paperwork and their hospitality and assistance during the four days on site.

Any questions arising from this report should be directed to [kim.larkin@ladirectories.com](mailto:kim.larkin@ladirectories.com)

