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## 1. Executive Summary

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1.3 The overarching conclusions are as follows:

(i) There is evidence to suggest that the decision of 30 July 2015 and the subsequent review was not correctly determined, in line with the Sandwell ruling.

(ii)

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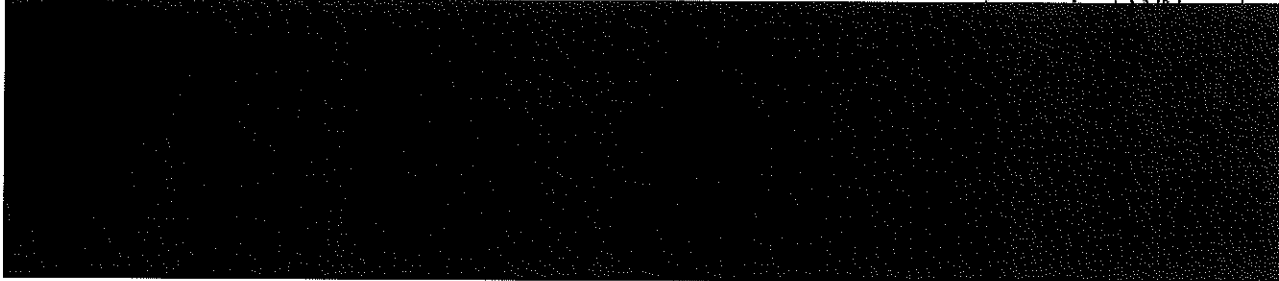
1.4 A summary of the conclusions relating to the allegation and recommendations relating to the Internal Control Environment are detailed in section 8 and 9 of the report.

## 2. Introduction

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2.2 The report comprises:

- A methodology, which details how the assessment was undertaken by the investigator.
  - The purpose of the report, which highlights why the assessment was required and provides details of the concerns.
  - A chronology, which details the events and actions undertaken since the day the concern was made, to the completion of the Internal Audit report.
  - A background to DHP.
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## 3. Methodology

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3.2 An initial assessment was undertaken by Legal Services and as a result of the assessment it was recommended that a more detailed assessment be undertaken into the concerns following the conclusion of another investigation relating to DHP.

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- Department for Work and Pensions (DWP) DHP Guidance Manual (including Local Authority Good Practice Guidance) April 2013. (Appendix 3)
- Department for Work and Pensions (DWP) DHP Guidance Manual (including Local Authority Good Practice Guidance) August 2015. (Appendix 4)
- DWP DHP Guidance Manual (including Local Authority Good Practice Guidance) February 2016. (Appendix 5)
- Wirral Council's DHP Procedures. (Appendix 6)
- Wirral Council's DHP Policy. (Appendix 7)
- Wirral Council's Authority to Discuss Procedures. (Appendix 8)
- Wirral Council's Requests for Appeal/Review Procedures. (Appendix 9)
- The claimant's DHP application and assessment documentation. (Appendix 10)
- The claimant's latest and past DHP applications and assessment documentation. (Appendix 11 (i) – (iii)).

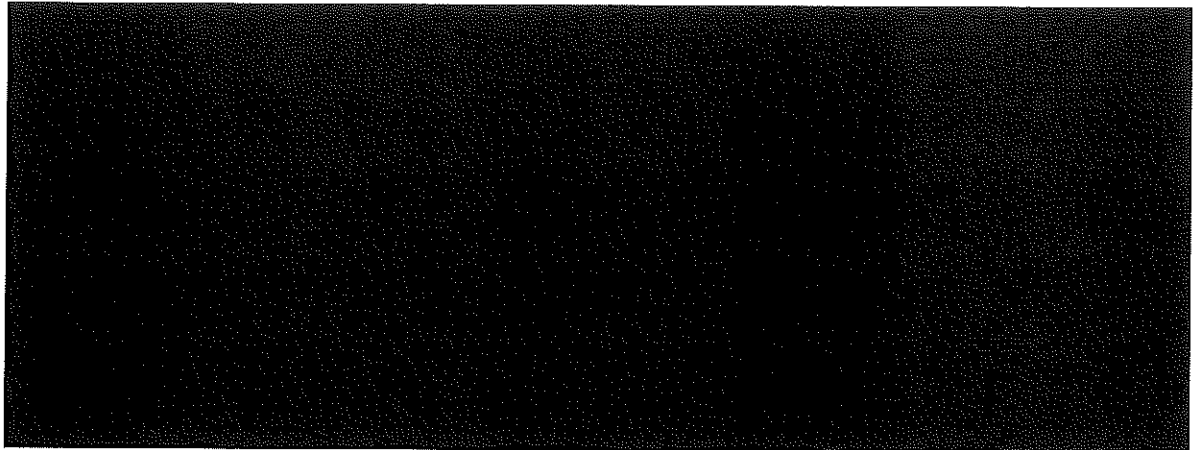
## 4. Purpose of report

4.2 In accordance with the Investigation Terms of Reference, as set out by the Monitoring Officer, the investigator will report on the following points:

- (i) Whether the decision which was made in July 2015 and subsequently reviewed in October 2015 was correctly determined taking into account the decision in *R v Sandwell Metropolitan Borough Council ex parte Hardy* [2015] EWHC 890 (Admin).
- (ii) Whether the decision taken by WN on 1st March 2016 was compliant with the decision in *R v Sandwell Metropolitan Borough Council ex parte Hardy* [2015] EWHC 890 (Admin).

(iii)

(iv)



- 4.3 By undertaking the investigation into the concerns raised it has also provided an opportunity to review a number of working practices and procedures in relation to the administration of DHPs, the findings of which are detailed in section 7 of this report.
- 4.4 It should be noted that the matters raised in this report are only those which came to the investigator's attention during the course of the review, and are not necessarily a comprehensive statement of all the weaknesses that may exist or all improvements that might be made.
- 4.5 Conclusions relating to the concerns and recommendations relating to the Internal Control Environment are detailed in section 8 and 9 of the report.
- 4.6 The content of the report is confidential. However, the "Recommendations relating to the Internal Control Environment" should be shared with the relevant Head of Service, to be actioned as appropriate.
- 4.7 Internal Audit is obliged to undertake a follow-up review within four months of the date of this report, so as to obtain evidence of the progress in implementing the recommendations. If recommendations have not been implemented within a reasonable timescale, the Audit and Risk Management Committee and Chief Executive will be notified.

## 5. Chronology

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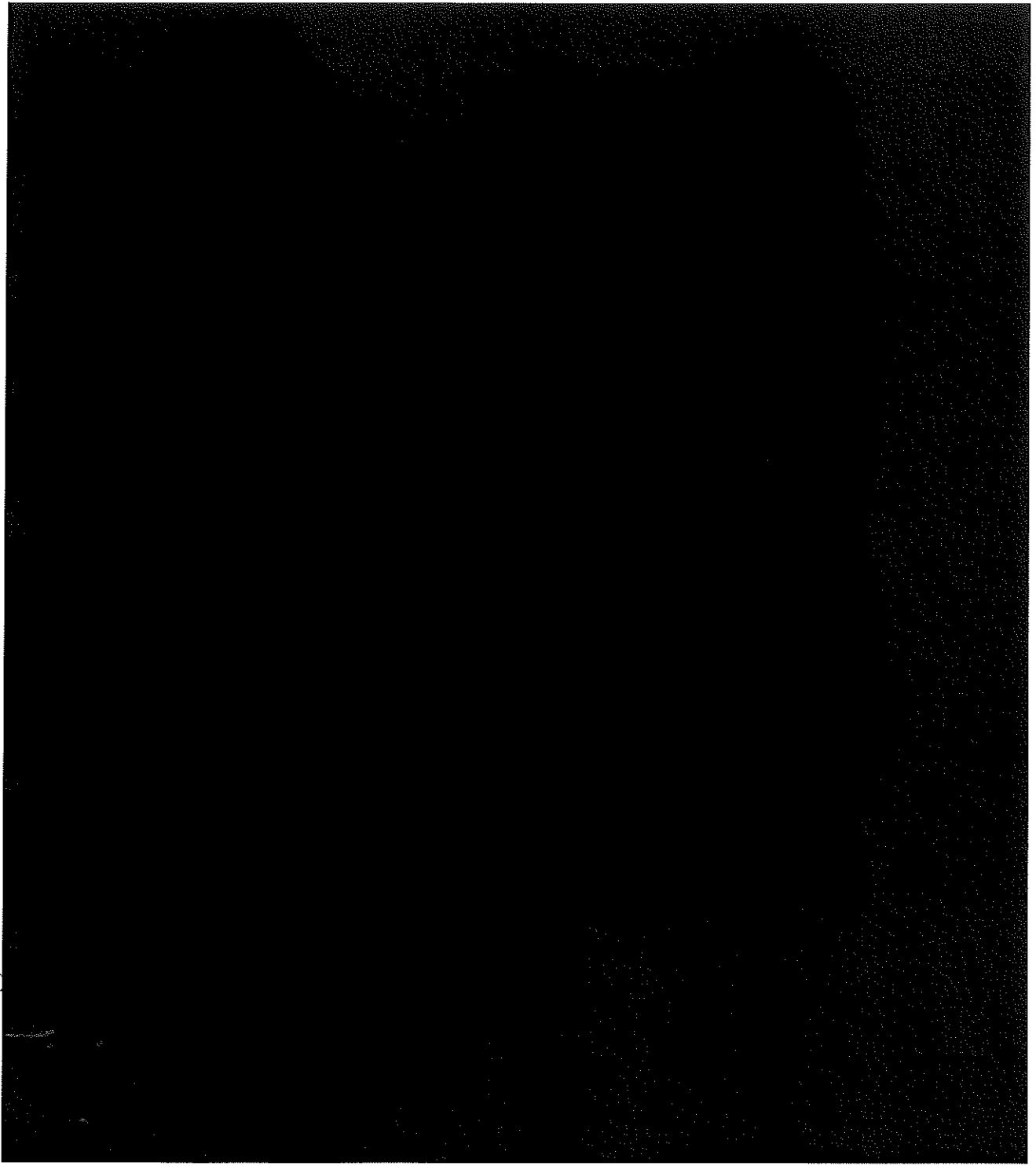
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## **6. Background to Discretionary Housing Payments**

- 6.1 DHPs are used by LAs to provide financial assistance to claimants, who experience a shortfall between the rent due and their Housing Benefit (HB) or Universal Credit (UC) entitlement.
- 6.2 DHPs were introduced in July 2001 and the legal framework covering DHPs are "The Discretionary Financial Assistance Regulations 2001". DHPs are funded by central government and LAs can use their own funds to top up the government contribution, by an additional 150%. However, once this limit is met LAs cannot award any more DHPs.
- 6.3 DHPs may be awarded, in addition to any welfare benefits, when a LA considers that a claimant requires further financial assistance towards housing costs. Housing costs are generally defined as rent, but can also include other costs such as a rent deposit. DHPs may be awarded as a one-off payment or periodically for a period a LA considers appropriate.
- 6.4 In establishing if a claimant requires further financial assistance, a LA can decide how to treat any expenditure, offsetting it against income intended to assist with such expenditure, as appropriate.
- 6.5 When an individual applies for a DHP, they must give the LA:
  - information the LA requires to make a decision or look at a decision again (for example details of income, capital and expenditure)
  - any other information the LA considers reasonably necessary in connection with their application.
- 6.6 DHPs cannot cover ineligible service charges such as those included in rent, increases in rent due to outstanding rent arrears, rent that is clearly excessive and certain sanctions and reductions in benefit.
- 6.7 As a result of announcements during the passage of the Welfare Reform Act 2012, the central government contribution towards DHPs has been increased to help LAs provide support to people affected by some of the key welfare reforms, such as the introduction of the benefit cap, social sector size criteria and the local housing allowance reforms.
- 6.8 The DWP provides guidance to LAs on how DHPs can be used and following the developments in 2012, the DWP guidance now includes a good practice guide that offers advice on how DHPs can be used to support certain categories of claimants and how LAs can contribute to the process of welfare reform by using DHPs.
- 6.9 From April 2013, the DWP DHP guidance was updated to reflect amendments to the Discretionary Financial Assistance regulations, which ensure the scheme covers the introduction of UC and abolition of Council Tax benefit.
- 6.10 The regulations require that there must be an application for DHP before a LA can consider making a payment, which may or may not be in writing. It is up to the LA how the application process will operate.
- 6.11 Although LAs can decide what constitutes an application, in each case, there must be something which triggers that application. This could be something as simple as a telephone call asking the claimant if they wish to apply for DHP or a claimant declaring



that they are having financial difficulties and are unable to meet their rent liability. A LA might automatically invite claimants who have suffered a shortfall in their rent as a result of the welfare reform changes, to make an application for a DHP, while at the same time advising the claimant of mitigating actions.

6.12 An application can be accepted from someone acting on behalf of the HB or UC claimant. This could be an appointee or advocate, for example, if the person is vulnerable and requires support; or the claimant may request that someone acts on their behalf.

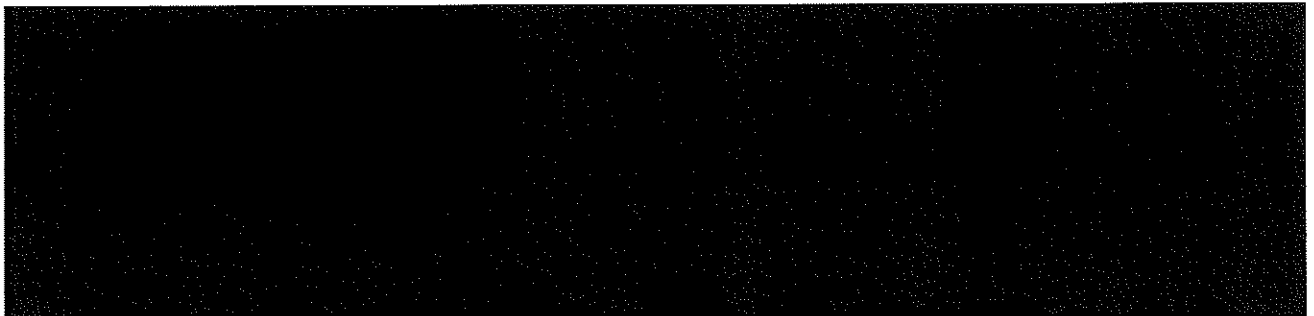
6.13 LAs have a large degree of discretion over the scheme and there are few regulatory restrictions. However, LA decisions must be made in accordance with ordinary principles of good decision making, i.e. administrative law. In particular, LAs have a duty to act fairly, reasonably and consistently. Each case must be decided on its own merits, and decision making should be consistent throughout the year.

6.14 Wirral Council has a number of objectives when considering whether to make an award of DHP. These are to:

- alleviate poverty
- encourage and sustain Wirral residents in employment
- safeguard Wirral residents in their homes
- help those who are trying to help themselves
- keep families together
- support the vulnerable in the local community
- help claimants through personal crises and difficult events

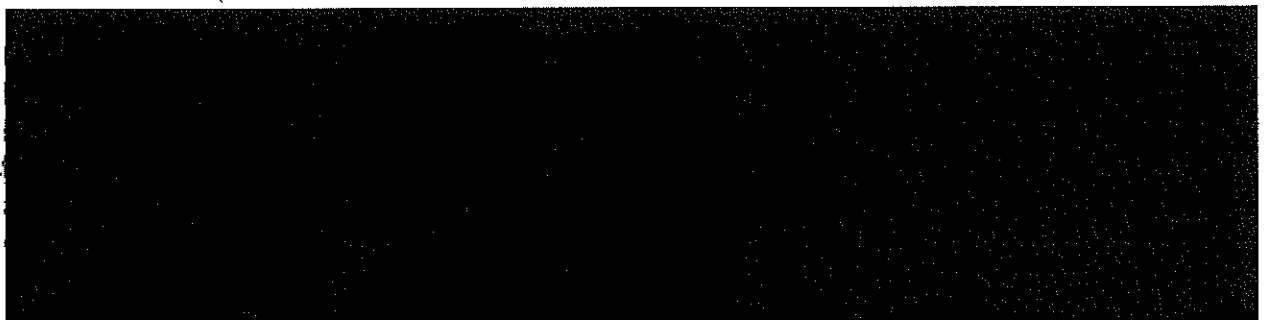
#### DHP assessment process at Wirral Council

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6.16 All Assessors who are on "band E" grade can undertake a DHP assessment and make a decision to award or refuse DHP. DHP awards of more than £25.00 per week or £1,000 in total are authorised by a Team Leader. When a decision is made the assessor sends a letter to the claimant, notifying them of the DHP decision.

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## 7. Findings

- 7.1 Test 1a) Whether the decision which was made in July 2015 and b) subsequently reviewed in October 2015 was correctly determined, taking into account the decision in *R v Sandwell Metropolitan Borough Council ex parte Hardy* [2015] EWHC 890 (Admin).

### The Sandwell Ruling

- 7.1.1 Taking Disability Living Allowance Care (DLA(c)) into account for the purposes of the DHP financial assessment was the focus of a High Court case *R v. Sandwell MBC, ex parte Hardy* in March 2015.
- 7.1.2 In the Sandwell case the High Court determined that Sandwell Metropolitan Borough Council's effective blanket policy of taking into account the care component of DLA as income, when assessing DHP applications, was unlawful on grounds that the authority had fettered its own discretion and that the policy amounted to indirect discrimination on grounds of disability.
- 7.1.3 The effect of the decision in the Sandwell case is that LAs should not have a blanket policy of taking into account DLA care component and other disability related benefits as income and in determining whether disability related benefits are to be considered as income for the purpose of awarding DHP, consideration has to be given to whether the income received from a disability related benefit is used to fund expenditure associated with that disability.
- 7.1.4 DWP DHP LA guidance issued in August 2015 (Appendix 4) makes reference to the decision of the High Court in *R v. Sandwell Metropolitan Borough Council (MBC), ex parte Hardy*. Paragraph 3.9 of the DWP guidance specifically refers to the Sandwell case and the treatment of disability related benefits, as follows:

*When deciding how to treat income from disability-related benefits such as Disability Living Allowance or the Personal Independence Payment, you should have regard to the decision of the High Court in R v. Sandwell MBC, ex parte Hardy. In particular, you should consider each DHP claim on a case by case basis having regard to the purpose of those benefits and whether the money from those benefits has been committed to other liabilities associated with disability.*

NB: Personal Independence Payment (PIP) is a new benefit that the Government introduced from 8 April 2013, which will eventually replace DLA for people aged 16 to 64.

- 7.1.5 An investigation has recently been undertaken, following a confidential report which was made to the Monitoring Officer, regarding concerns that Wirral Council is failing to take into account the judgement of the Sandwell case (March 2015) and ignoring DWP guidance, by routinely including DLA(c) or PIP, when assessing DHP awards.
- 7.1.6 The investigation focused on DHP applications where DLA(c)/PIP is in payment and whether applications have been assessed in accordance with Wirral Council's own procedures and processed in compliance with the decision in the Sandwell case and DWP Guidance.

7.1.7 The main finding from the investigation was that in the majority of cases examined the DHP application had been assessed in accordance with Wirral Council's own procedures/training. However, the procedures/training leads the assessor to include DLA(c)/PIP income in their assessment of DHP.

7.1.8 The findings from the investigation resulted in the following key recommendations:

- The procedure manual should be updated, to ensure that it refers to the Sandwell case and no longer directs the assessor to include all income normally disregarded, but instead to consider disability related expenditure when deciding whether or not to include DLA(c) income.
- If the applicant has not provided evidence of expenses relating to their disability and the application form does not specifically request such information, the assessor should contact the applicant to determine if they have any disability expenses and retain all supporting evidence. Where an assessor chooses to include or disregard DLA(c) income the reason should be documented on the DHP worksheet by the assessor in all cases.
- The revised procedures should be communicated to all assessment staff undertaking DHP assessments.

7.1.9 The recommendations detailed above are in the process of being implemented by the responsible department.

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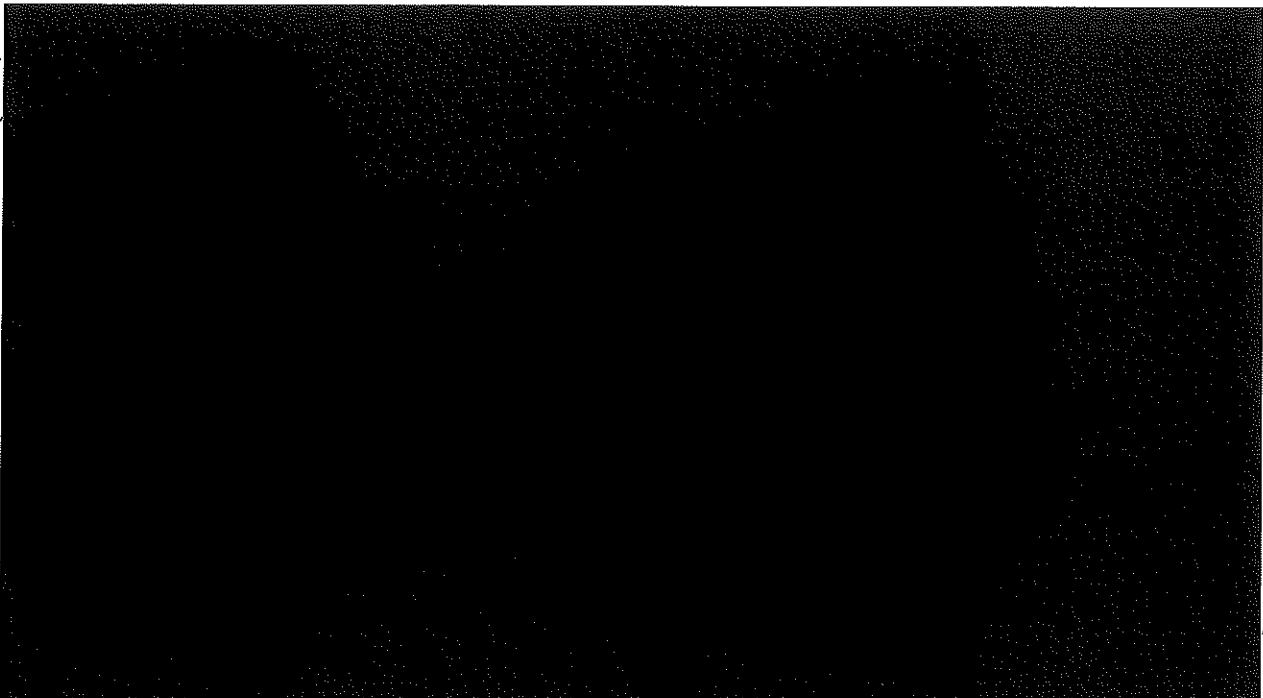
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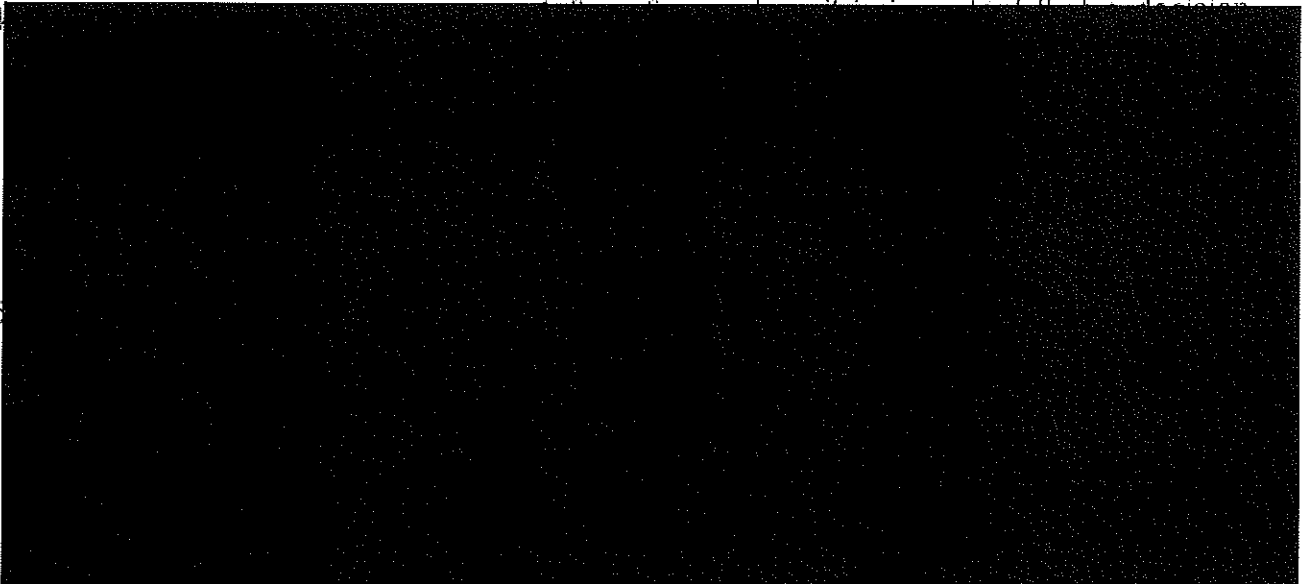


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7.1.33 There was no evidence that DHP training had been delivered to assessors since the publication of the Sandwell case. Therefore, if assessors were referring to their training materials when assessing claims they would be making their decision based on the following instruction:

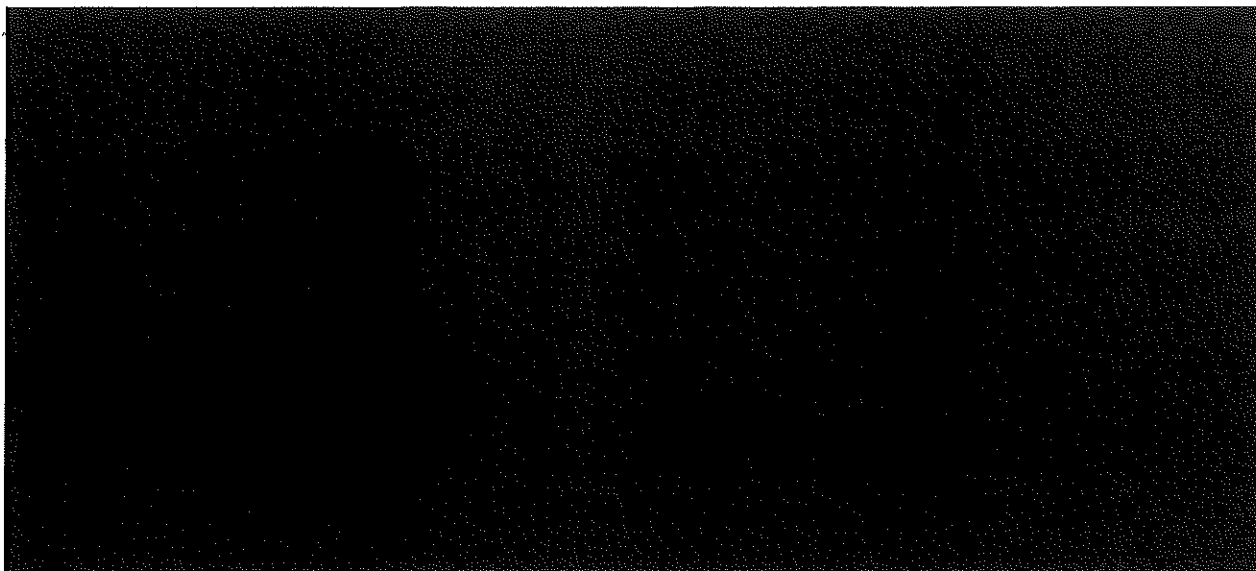
*Take all the claimants income into account including those items normally disregarded. The only exception to this is DLA Mobility that remains disregarded. You should also disregard any travel expenses (i.e. petrol, car insurance, car loans, car tax) but only up to the level of the DLA mobility.*

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**7.1.37 Test 1a Summary Conclusion**

There is evidence to suggest that the decision of 30 July 2015 was not correctly determined, as the R v Sandwell Metropolitan Borough Council ex parte Hardy [2015] EWHC 890 (Admin) case was not taken into account during the assessment process.





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- (i) The DHP policy and procedures should to be reviewed and amended to ensure that they no longer refer to the Appeals Team, there is clear guidance on timeframes between the first and second review and they adequately reflect the current review/appeals procedure.
- (ii) The revised policy and procedures should be communicated to all Benefit Officers who undertake DHP assessments.

## 7.2



- 7.2.1 The DWP DHP Guidance Manual (including Local Authority Good Practice Guidance) February 2016 (Appendix 5) states the following in relation to the treatment of DLA/PIP income and expenditure:

*When deciding how to treat income from disability-related benefits such as Disability Living Allowance or the Personal Independence Payment, you should have regard to the decision of the High Court in R v. Sandwell MBC, ex parte Hardy. In particular, you should consider each DHP claim on a case by case basis having regard to the purpose of those benefits and whether the money from those benefits has been committed to other liabilities associated with disability.*

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### 7.3.1 Wirral Council's DHP procedure states the following in relation to the DHP application and assessment process (Appendix 6):

*The claimant must apply for DHP. Although this can be in the form of a telephone call, normally we will ask the claimant to complete a special claim form so that the correct information regarding income and expenditure are given.*

*When dealing with DHP applications, regardless of the decision made, the outcome must be recorded on Academy.*

*When a decision is reached, the factors considered need to be recorded on a worksheet held on Civica. You will need to complete the worksheet providing details of all the income and outgoings the claimant has supplied on their DHP application form.*

*You must ensure that all of the reasons for reaching your decision are clearly marked on the form you will need to do this regardless of the outcome. Keep in mind that it is more likely that a decision to refuse or partially award may be challenged by the customer and the way you record your decision will become more important if/when the case is reviewed by the Appeals Team.*

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**7.3.20 Internal Control Recommendation 2**

- (i) All evidence in relation to a claim should be recorded on the Civica and Academy systems in a timely manner, in line with the DHP procedures.
- (ii) All email correspondence should be directed straight to a central email address, rather than an assessors email address.

**7.3.21 Internal Control Recommendation 3**

It should be ensured that when a claimant wishes to use a third party to help them with their claim, the appropriate 'authority to discuss' declaration is completed and signed by the claimant.

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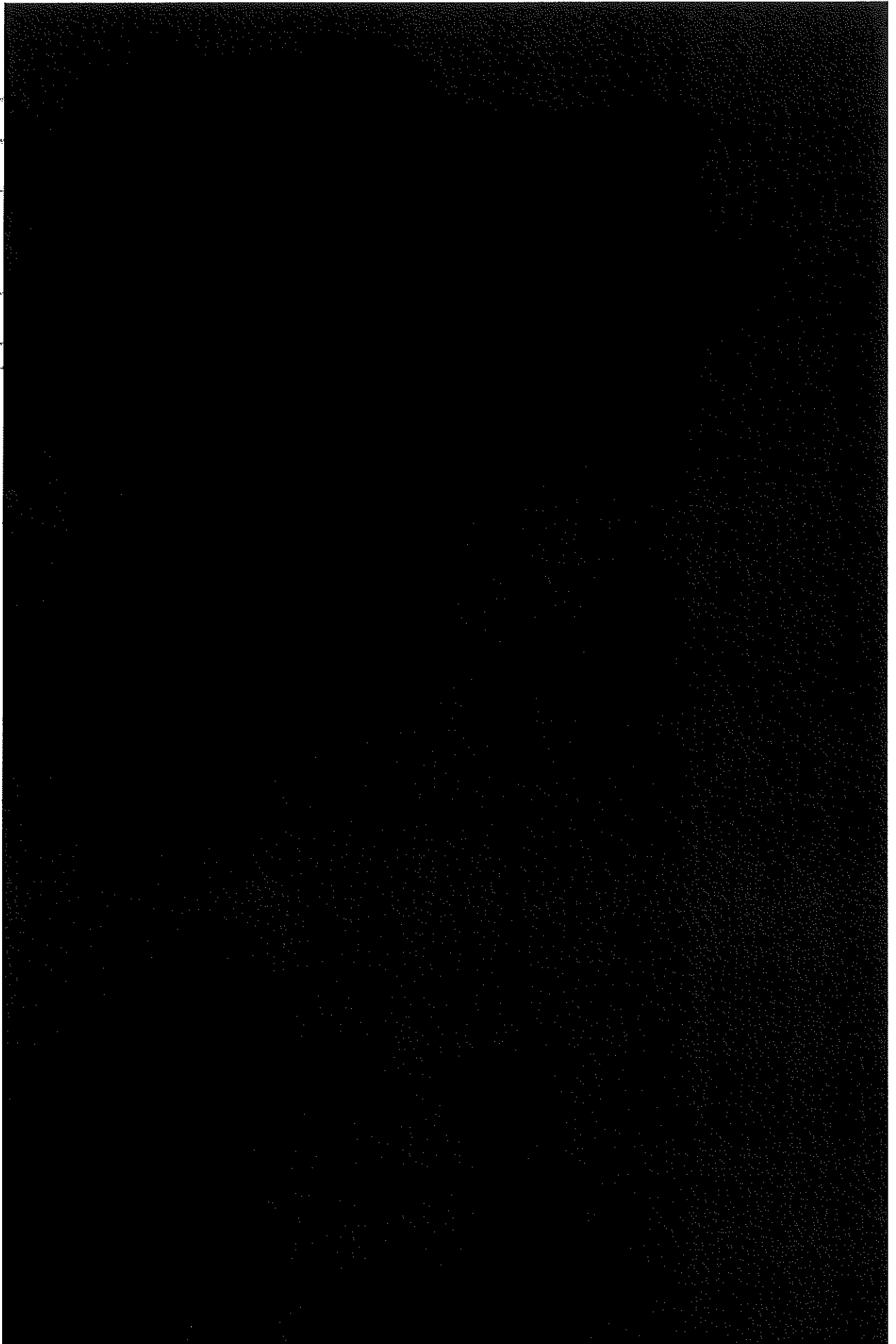
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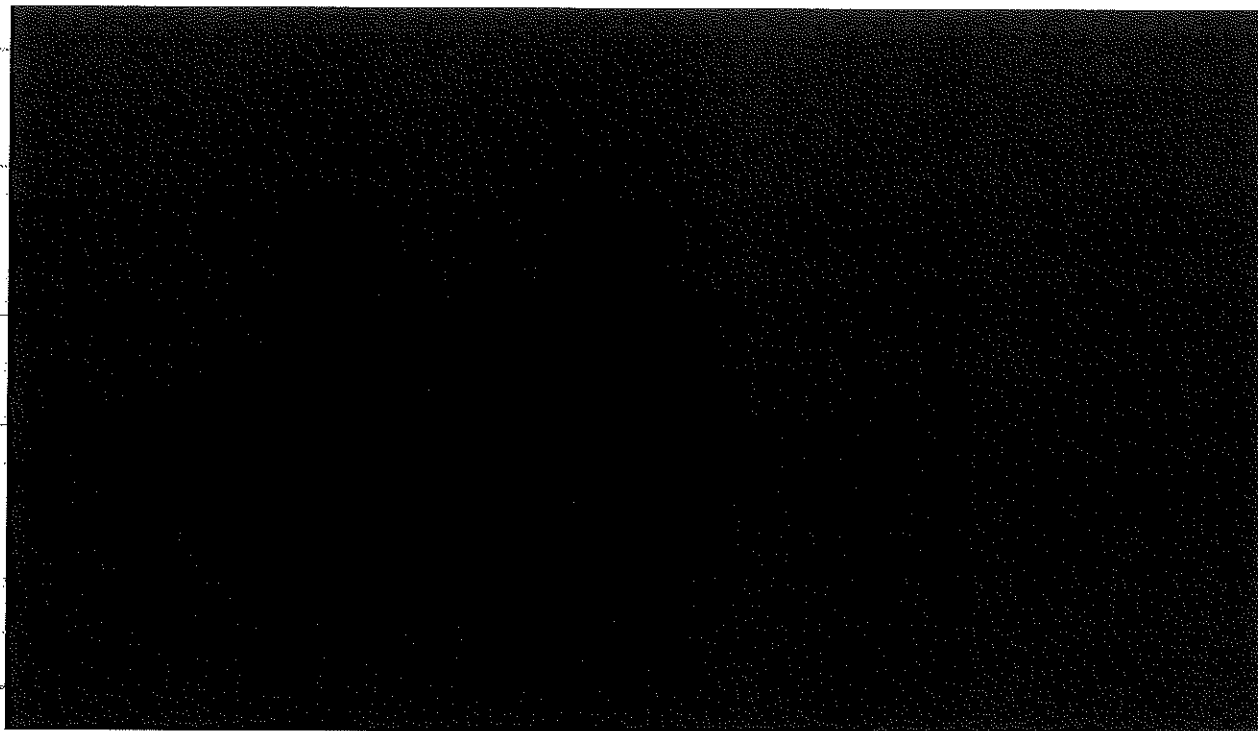


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## 8. Summary conclusions relating to the concerns

Ref	Conclusion
1	<p><u>Test 1a - Report Ref 7.1.37.</u></p> <p>There is evidence to suggest that the decision of 30 July 2015 was not correctly determined, as the R v Sandwell Metropolitan Borough Council ex parte Hardy [2015] EWHC 890 (Admin) case was not taken into account during the assessment process.</p> <p><u>Test 1b - Report Ref 7.1.55.</u></p> <p>There is evidence to suggest that the review decision made in October 2015 was not correctly determined. Although the Benefits Officer who undertook the review has acknowledged the R v Sandwell Metropolitan Borough Council ex parte Hardy [2015] EWHC 890 (Admin) ruling, she has stated that she could not change the original decision, as it was based on Wirral Council's current procedure, which at the time was not in line with the Sandwell ruling.</p> 
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## 9. Summary of Recommendations relating to the Internal Control Environment

Rec	Internal Control Recommendation	Person to Action	Implementation Target Date
1	<p><u>Report Ref 7.1.56</u></p> <p>(i) The DHP policy and procedures should to be reviewed and amended to ensure that they no longer refer to the Appeals Team, there is clear guidance on timeframes between the first and second review and they adequately reflect the current review/appeals procedure.</p> <p>(ii) The revised policy and procedures should be communicated to all Benefit Officers who undertake DHP assessments.</p>		
2	<p><u>Report Ref 7.3.20</u></p> <p>(i) All evidence in relation to a claim should be recorded on the Civica and Academy systems in a timely manner, in line with the DHP procedures.</p> <p>(ii) All email correspondence should be directed straight to a central email address rather than an assessors email address.</p>		
3	<p><u>Report Ref 7.3.21</u></p> <p>It should be ensured that when a claimant wishes to use a third party to help them with their claim the appropriate 'authority to discuss' declaration is completed and signed by the claimant.</p>		

## 10. Appendices

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3	Department for Work and Pensions (DWP) DHP Guidance Manual (including Local Authority Good Practice Guidance) April 2013.
4	DWP DHP Guidance Manual (including Local Authority Good Practice Guidance) August 2015.
5	DWP DHP Guidance Manual (including Local Authority Good Practice Guidance) February 2016.
6	Wirral Council's DHP Procedures.
7	Wirral Council's DHP Policy.
8	Wirral Council's Authority to Discuss Procedures
9	Wirral Council's Requests for Appeal/Review Procedures
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