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## 1. Executive Summary

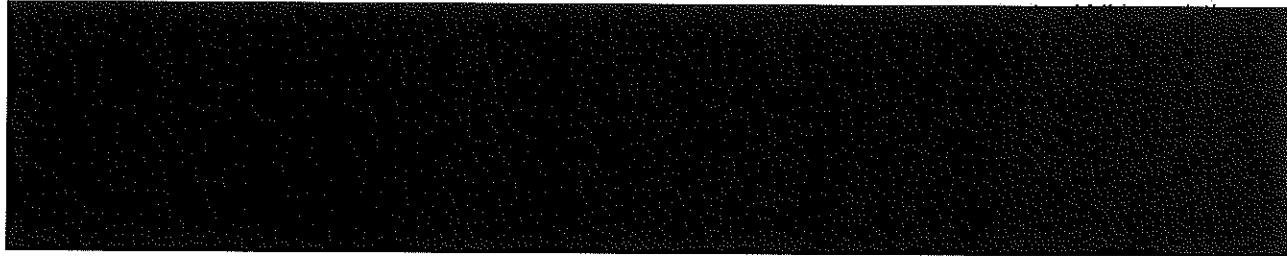
- 1.1 An investigation has recently been undertaken, following a confidential report which was made to the Monitoring Officer, regarding concerns that Wirral Council is failing to take into account the judgement of the Sandwell case (March 2015) and ignoring DWP guidance, by routinely including Disability Living Allowance care (DLA(c)), when assessing DHP awards.
- 1.2 The investigation focused on DHP applications (where DLA(c) 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.
- 1.3 The overarching conclusions are as follows:
  - (i) In the majority of cases examined the DHP application has been assessed in accordance with Wirral Council's own procedures. However, the training materials instruct and procedures lead the assessor to include DLA(c) income in their assessment of DHP.
  - (ii) Of the thirty one decisions made post Sandwell, there is only evidence in eight to suggest that the decision has been made in accordance with the Sandwell ruling and the DWP DHP guidance (dated August 2015) and although there is evidence to suggest that assessors were informed of the Sandwell case following the publication of the DWP DHP guidance, it is not clear exactly what was communicated with regard to the treatment of DLA(c) and disability related expenses.
  - (iii) The training materials and procedures were not updated following the Sandwell case and therefore remain unchanged. However, it is acknowledged that the procedures are currently being amended.
  - (iv) If the DWP DHP guidance is not followed claimants who are in receipt of DLA(c) may be refused DHP or a partial award of DHP, which could result in a greater financial impact on the claimant.
- 1.4 A number of recommendations were identified during the investigation, the following of which require immediate action:
  - (i) 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.
  - (ii) 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.
  - (iii) The revised procedures should be communicated to all assessment staff undertaking DHP assessments.
- 1.5 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

2.1



2.2 The report comprises:

- A methodology, which details how the investigation was undertaken by the investigator.
  - The purpose of the report, which highlights why the investigation was required and provides details of the allegation.
  - A chronology, which details the events and actions undertaken since the day the Confidential Report was made, to the completion of the investigation report.
  - A background to DHP.
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## 3. Methodology

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- The CRF1 (Appendix 1)
- Department for Work and Pensions (DWP) DHP Guidance Manual (including Local Authority Good Practice Guidance) April 2013 (Appendix 6)
- Department for Work and Pensions (DWP) DHP Guidance Manual (including Local Authority Good Practice Guidance) August 2015 (Appendix 7)
- DWP DHP Guidance Manual (including Local Authority Good Practice Guidance) February 2016 (Appendix 8)
- Wirral Council's DHP Procedures (Appendix 9)
- Wirral Council's DHP Priority Matrix (Appendix 10)
- DHP Internal Audit Report 2013 (Appendix 11)
- Extract from the Housing Benefit (HB) Online Procedure Manual which links to the Local Authority (LA) Directories Limited information page. (LA Directories Limited provides Wirral Council with information relating to law and guidance governing Housing Benefit, Council Tax Reduction and Universal Credit (UC). (Appendix 12)
- Copies of the training pack issued to assessors during 2011 training (Appendix 23)

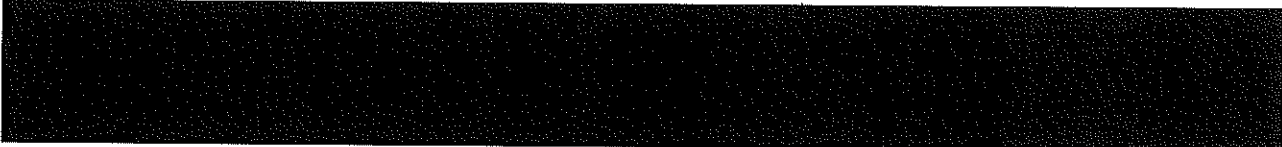
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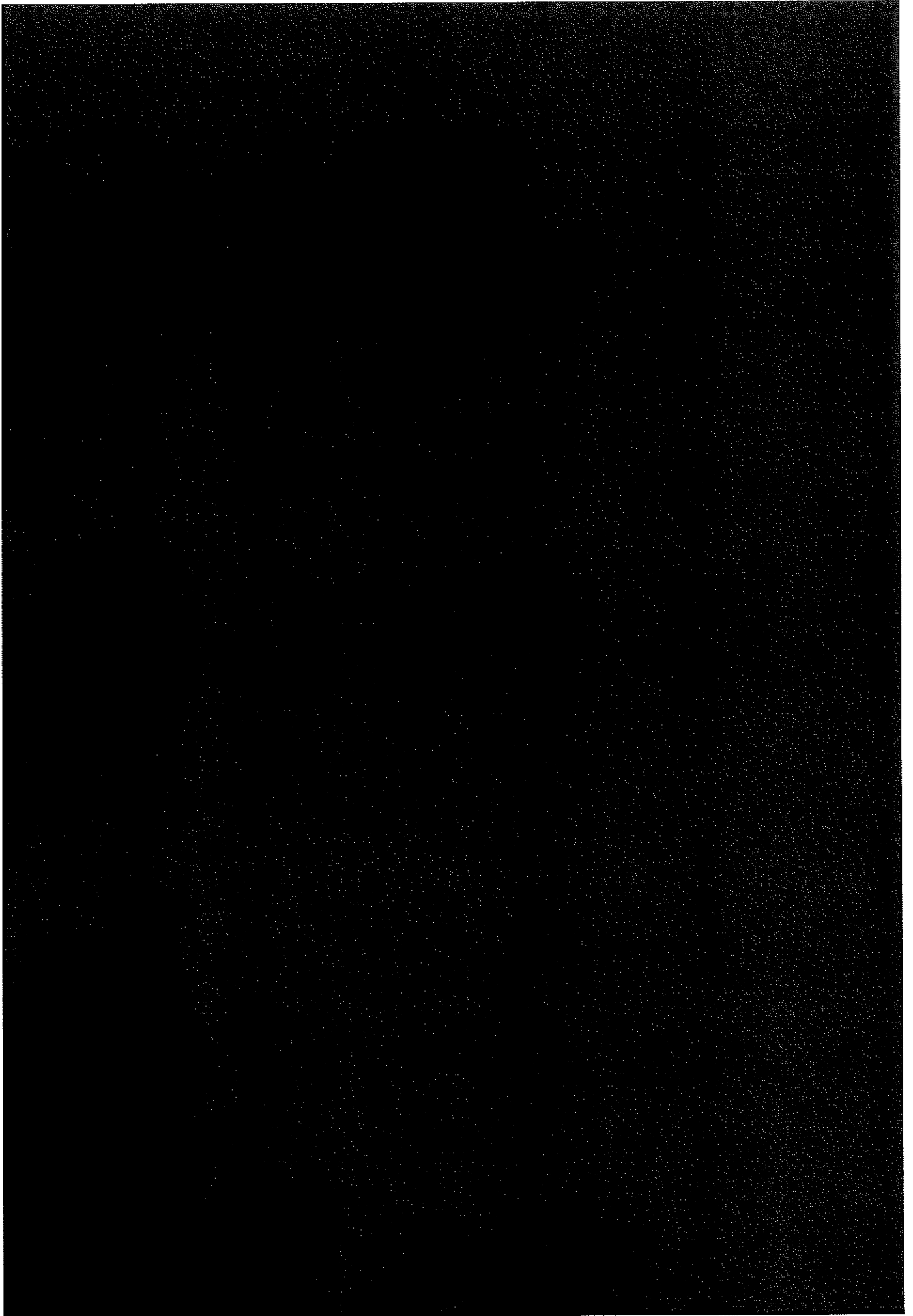
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- Copies of the training pack issued to assessors during the 2005 and 2007 training (Appendix 20 and 21)
- Power point presentation used during assessor DHP training sessions. (Appendix 22)
- Details of those assessors who have received DHP training.

3.9

## 4. Purpose of report

- 4.1 An investigation has 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 Disability Living Allowance care (DLA(c)), when assessing DHP awards.
- 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 DHP applications have been assessed in accordance with Wirral Council's own procedures.
  - (ii) Whether in the opinion of the Investigator applications for DHP's have been processed and determined by Wirral Council in compliance with the decision in the Sandwell case and DWP Guidance (dated February 2016).
  - (iii) Whether in the opinion of the Investigator applications for DHP's which have been processed and determined by Wirral Council, prior to the decision in the Sandwell case, were processed in compliance with the decision in Sandwell and DWP Guidance (dated April 2013).
  - (iv) Whether, in those cases reviewed by the Investigator, there is clear evidence of an assessment of the claimant's income and any expenditure, in relation to his/her disability, when determining whether or not to include disability related benefits and DLA care component, in the assessment of the claimant's disposable income.
- 4.3 
- 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 allegation 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" can be shared more widely.



## 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 their 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 an 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, namely:
- Introduction of the benefit cap
  - Introduction of the social sector size criteria
  - 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 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.



6.10 As summarised by LA directories Limited, there were four points argued before Justice Phillips –

- the LA fettered its own discretion, and
- the decision amounted to a breach of Article 14 (discrimination) of the European Convention on Human Rights, and
- the decision amounted to a breach of the LAs Public Sector Equality Duty under s.29(6) of the Equality Act 2010, and
- the decision was irrational and against statutory purpose

Justice Phillips gave judgment upholding the first three points. In doing so he accepted the claimant's argument that to refuse a full DHP to disabled persons affected by the controversial "bedroom tax", on the basis of a blanket policy that DLA(c) could be treated as income available to meet any shortfall in rent fettered the LAs discretion, was unlawful discrimination, contrary to Article 14 ECHR and section 29(6) of the Equality Act 2010.

However, on the final point that it was irrational and against statutory purpose for the LA to take account of DLA(c) in the DHP means test, the claimant failed. The Judge noted that DLA(c) had not been ring-fenced as had DLA(M), a choice made by parliament to disregard for HB only meant it is not possible to extract a wider statutory purpose.

He further stated – "Whether it is right for DLA(c) to be taken into account in assessing another benefit in any particular case may well engage issues of public law and the Human Rights Act, as discussed above in relation to the facts of this case, but taking into account DLA(c) in calculating another benefit is not in itself irrational."

6.11 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. DWP DHP LA guidance issued in August 2015 and February 2016 also makes reference to the decision of the High Court in R v. Sandwell Metropolitan Borough Council (MBC), ex parte Hardy.

6.12 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.*

6.13 The DWP guidance also advises LAs that a policy that is too rigid will effectively prevent LAs from exercising their discretion properly in individual cases.

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

6.15 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.

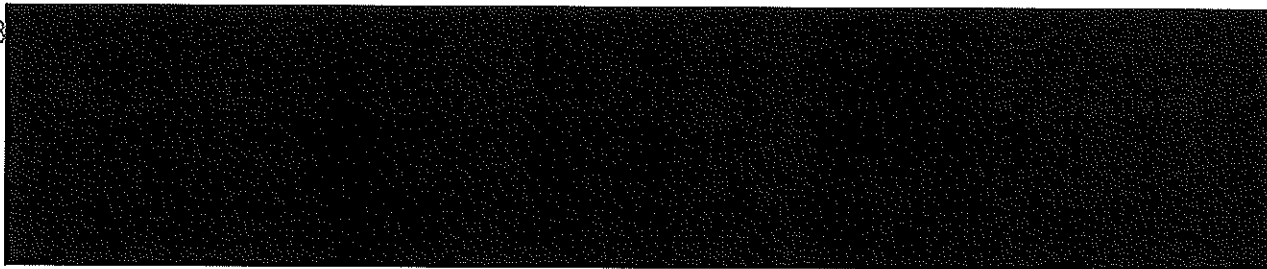
#### DHP assessment process at Wirral Council

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6.17 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 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.

6.18



## 7. Findings

### 7.1 Test 1 - Whether DHP applications have been assessed in accordance with Wirral Council's own procedures.

#### 7.1.1 Wirral Council's DHP Policy was last updated in May 2013 (Appendix 14) and it states the following in relation to the administration of the DHP scheme:

*"Each case will be treated strictly on its merits and all customers will be treated equally and fairly."*

#### 7.1.2

#### 7.1.3

#### 7.1.4

#### 7.1.5 The Council's current procedures "DHP Priority Matrix Guidance" for assessors was last updated in 2013 and is available within the HB online procedure manual. The document states the following in relation to the assessment and awarding of DHP (Appendix 10):

*Use the matrix as a guide to making DHP awards, including the length of the award. Remember each claim must be considered separately and on its own merits. You may need to seek Team Leader guidance in some cases.*

#### **Disabled**

*This refers to claimants who:-*

- have had property adaptations to meet disability needs within the household*
- require a separate bedroom for medical reasons e.g a couple unable to share a bedroom or a child who would normally be expected to share a bedroom but who has a condition which means they are unable to share and are not entitled to a disabled child extra room.*
- requires a separate room to store medical equipment*

- it would be unreasonable to move because of a medical condition e.g - a terminal illness.

*In all cases you should request medical evidence if the situation is not clear from the information supplied or you feel the opinion of a medical professional is relevant.*

*You should also consider the total household income. Some people are entitled to high level disability benefits because of the nature of their condition and it is not unreasonable to expect them to use some or all of this towards any shortfall in rent. You may consider a partial award of DHP to be appropriate.*

- 7.1.6 The latest DHP training materials, dated 2011 state the following in relation to the assessment and awarding of DHP (Appendix 23):

When should DHP be awarded

*The following should be seen only as a guide and not a definite answer as to when/when not to make an award.*

*You must make your own judgement taking into account all of the available information.*

Income and Expenditure

*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.*

*Disabled claimants usually receive increased benefit income. The more disabled they are the more the benefits increase. Often the benefit increases far outweigh the increased expenditure arising from the disability. Often a claimant will state that they are severely disabled but do not receive DLA. If DLA is claimed and awarded that will improve the financial situation. If DLA is refused it is likely that they are not as disabled as they have stated.*

- 7.1.7 The 2005 and 2007 training materials convey a very similar message to what is detailed in the 2011 training materials, as detailed above (Appendix 20 and 21).

- 7.1.8 The Power Point presentation used by the Training Team to delivery assessor training (last modified in 2011), details the following in relation assessment and awarding of DHP (Appendix 22):

*Take into account all income (including income usually disregarded – except DLA Mobility)*

7.1.9

7.1.10

7.1.1

7.1.12 A sample of thirty six cases were selected and all relevant information reviewed, such as the DHP application form, Customer Information System memo (detailing DLA level in payment), assessor worksheet (detailing income and expenditure calculations), a copy of the award/refusal letter sent to the claimant and the assessor notes. Five decisions were made pre Sandwell and thirty one decisions were made post Sandwell.

7.1.13 From the sample of thirty six cases examined the assessor had taken the DLA(c) income into consideration in thirty four cases.

7.1.14 In one of the thirty four cases DLA mobility income was incorrectly included in the assessment. However, if it had been disregarded this still would not have had affected the decision, which was to refuse DHP. What may have affected the decision was the fact that DLA(c) was included in the income and the claimant stated in their application form that they need to use taxis when too ill to drive. There is no evidence to confirm that an attempt was made by the assessor to establish if taxi expenses were included within the travel expenses, detailed on the application form.

7.1.15 In two of the thirty six cases examined DLA(c) was disregarded in the assessment of income and expenditure. Both decisions were made post Sandwell, with one decision resulting in an award of DHP and the other a refusal.

#### 7.1.16 Test 1 Conclusion

- (i) There is no evidence to confirm that assessors have considered the Council's DHP policy, which states that "each case will be treated strictly on its merits and all customers will be treated equally and fairly." Although the assessor training refers to LA Directories link, HB online procedures and DWP guidance, it appears that assessors utilise the training materials provided during assessor training, which would lead the assessor to include DLA(c) income within the calculation, as supported by the test findings.
- (ii) In two cases the decision was made post Sandwell and DLA(c) income was disregarded in the income calculation. In one case the assessor incorrectly included DLA mobility within the income calculation, as detailed at 7.1.14.
- (iii) It is evident from the test findings that in thirty three of the thirty six cases examined the DHP application has been assessed in accordance with Wirral Council's own procedures i.e. the training materials given to assessors during their DHP training.

**7.2 Test 2 - Whether in the opinion of the investigator applications for DHP's have been processed and determined by Wirral Council in compliance with the decision in the Sandwell case and DWP Guidance (dated February 2016).**

7.2.1 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.

7.2.2 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.

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7.2.18 The latest DHP Equality Impact assessment (dated May 2013) states the following with regards to the decision making process used to consider whether a claimant has met the criteria to qualify for a DHP, in relation to Disability groups (Appendix 25):

*Tenants in social rented sector who have specific requirements due to a disability*

*Positive –*

- 1) those with adaptations to their property to meet disability needs will be considered favourably*
- 2) those who need separate rooms for medical reasons will be considered favourably*
- 3) those who it is unreasonable to expect to downsize due to a medical condition and do not meet criteria for additional bedroom will be considered favourably*

*Negative –*

*Those with a high level of disability benefits may be considered to have sufficient disposable income to pay the shortfall in rent*

*In the action taken to mitigate any potential negative impact, it states the following:*

*Disability benefits relating to mobility will be disregarded as income.*

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7.2.27 In August 2015 the DWP published their DHP guidance to Local Authorities. See Paragraph 3.9 which specifically refers to the Sandwell case and the treatment of disability related benefits, as follows: (Appendix 7)

*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.*

7.2.28 The same paragraph as detailed above also appears in the DWP DHP guidance, dated February 2016. (Appendix 8)

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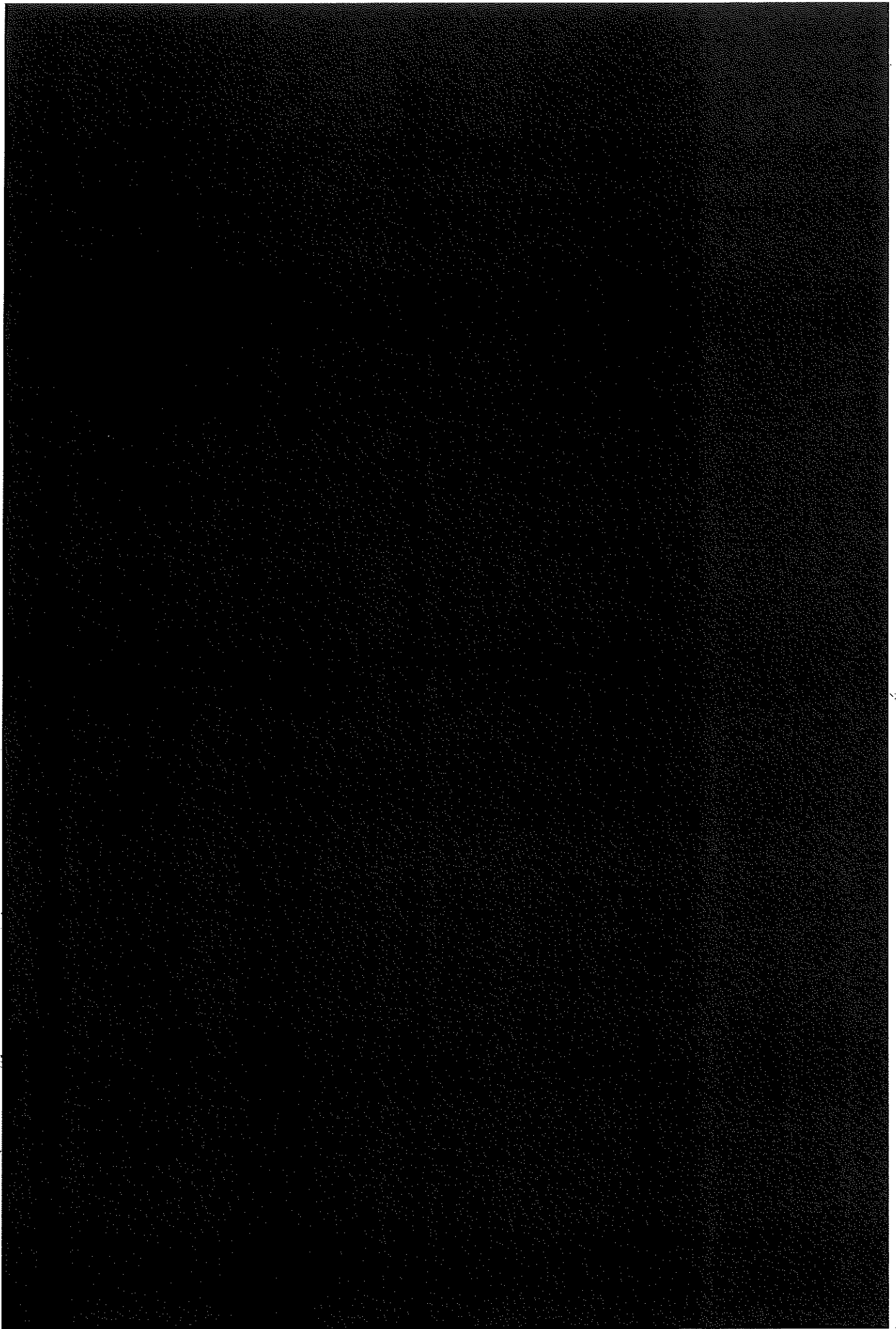
7.2.33

7.2.34 The Council has an information leaflet for tenants which briefly describes DHP's and how to make an application which states the following:

*You will need to put as much information to support your application, as to why you need extra help to pay your rent and why you cannot manage.*

7.2.35 The Council's DHP application form for tenants states the following in relation to expenditure incurred:

*Please give details below of all your expenditure.*



7.2.47 The Council has issued new guidance on the HB online procedure manual, in March 2016, which states the following:

*You should consider all aspects of the individual's circumstances when considering an award. e.g. If they are paying for care from the DLA/PIP awards.*

7.2.48 However, the guidance is specifically for "Universal Credit DHP claims" and may only be referred to by assessors when they have a particular case, where the claimant is in receipt of Universal Credit.

7.2.49

(i)

(ii) One decision to refuse DHP made by the Compliance Team, disregarded the DLA(c). However, the reason for this was not recorded.

(iii) DLA(c) income was included in twenty nine decisions and in all cases the reason the DLA(c) income was included has not been recorded within the assessor's worksheet or notes. In all cases to there is no evidence that the assessor has contacted the claimant to determine care expenditure.

#### 7.2.50 Test 2 Conclusion

7.2.51 There is no evidence that DHP training has been delivered to assessors since the publication of the Sandwell case. Therefore, if assessors are 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.*

7.2.52

7.2.53

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7.2.5

7.2.56 The DHP Equality Impact Assessment dated 2013 states the following:

Negative –

*Those with a high level of disability benefits may be considered to have sufficient disposable income to pay the shortfall in rent.*

Again, this statement would lead one to conclude that DLA(c) should not be disregarded from the income calculation.

7.2.57

7.2.58 Following the Sandwell case the DWP DHP LA guidance now makes reference to the judgement. In summary the DWP guidance states the following:

*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.*

7.2.59 (i) Of the thirty one decisions examined, that were made post Sandwell, the DLA(c) has only been excluded from the income calculation in two cases. However, in one of these two cases the decision to exclude the DLA(c) income had not been recorded by the assessor.

Of the remaining twenty nine decisions where the DLA(c) income was included in the calculation, the reason for inclusion has not been recorded.

(ii) In six of the twenty nine decisions disability expenditure was included in the calculation, due to the claimant detailing the expenses on the DHP application form.

(iii) In the twenty nine decisions where the assessor had included DLA(c) income in the calculation it appears that in some cases the assessor has restricted a higher than average figure for household expenses or disregarded "other costs" listed on the DHP application form, without an explanation. In all of the twenty nine decisions there was no evidence to suggest that the assessor had contacted the claimant to establish if there were any additional care expenses or increased household expenses, such as gas, electricity or clothing relating to the claimant's disability.

7.2.60 In summary, of the thirty one decisions made post Sandwell, there is only evidence in eight to suggest that the decision has been made in accordance with the Sandwell ruling and the DWP DHP guidance (dated August 2015 and February 2016). For six decisions the claimant had recorded the disability related expenditure on the DHP application form and due to a lack of evidence recorded by the assessor it has not been possible, without further investigation, to establish whether or not the assessor considered the Sandwell case and DWP DHP guidance when making their decision.

7.2.61 The following recommendations relate to Internal Control improvements to systems:

**(i) Internal Control Recommendation 1**

The following should be undertaken in relation to the Council's DHP policy, procedures and training:

- (i) Review the Policy and EIA to ensure compliance with the DWP DHP guidance.
- (ii) Update the procedure manual and training materials, to ensure that they refer to the Sandwell case and they no longer direct 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.
- (iii) Ensure the changes are communicated to all assessment staff undertaking DHP assessments.
- (iv) Remind assessors to visit the LA Directories Limited link through the HB Online procedures on a regular basis, to ensure that they keep up to date with case law decisions which could impact decisions.

**(ii) Internal Control Recommendation 2**

The following should be undertaken in relation to disability expenditure:

- (i) Amend the application form so that it includes a specific invitation for the claimant to provide details of spending, regular or otherwise, on items referable to dealing with or arising from a disability.
- (ii) Consider utilising the Disability Related Expenditure guidelines (as used by the Personal Finance unit) when undertaking assessments or;
- (iii) Consider implementing a process i.e. letter to claimant, to gather information about disability related expenses, where they are not detailed on the application.
- (iv) Amend the DHP tenant leaflet so that it advises a tenant that when they apply for DHP, to include any expenditure related to their disability.

**(iii) Internal Control Recommendation 3**

- (i) If assessors choose to include DLA(c) income in a DHP assessment, they should consider any expenditure (including increased heating, washing or any other additional costs) that may be related to their disability.
- (ii) 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.

**(iv) Internal Control Recommendation 4**

The DWP guidance advises LAs to give consideration to the following when assessing DHP claims:

- a second member of staff could check the decision to ensure consistency;
- visit claimants in their own home as it helps to confirm their circumstances and establish what further help or advice they require;
- when a change of circumstances means that an award of HB or UC is reviewed, review the DHP award at the same time, as the change of circumstances may mean that the criteria for DHP are no longer met, or a different amount may be appropriate.

**(v) Internal Control Recommendation 5**

To ensure assessor decisions are made in accordance with ordinary principles of good decision making, i.e. administrative law and they are made fairly, reasonably and consistently throughout the year, reviews should be undertaken by Team Leaders. This would also allow for the identification of any training needs.

**7.3 Test 3 - Whether in the opinion of the investigator applications for DHP's which have been processed and determined by Wirral Council, prior to the decision in the Sandwell case, were processed in compliance with the decision in Sandwell and DWP Guidance (dated April 2013)**

**Findings**

- 7.3.1 The DWP DHP Guidance Manual April 2013, states the following in relation to information a Claimant must give *with regard to details of income and expenditure* (Appendix 6):

*Paragraph 3.8 and 3.9*

*In establishing if the claimant requires further financial assistance, you can decide how to treat any income and expenditure, taking into consideration the purpose of the income where appropriate.*

*You may decide to disregard income from disability related benefits as they are intended to be used to help pay for the extra costs of disability. You may also want to bear in mind that such money might be committed to other liabilities for which the money is intended, such as Motability Schemes or provision of care.*

- 7.3.2 Of the thirty six DHP decisions examined, five were made prior to the Sandwell case (31 March 2015). In all five cases DLA(c) income was included in the income calculation. However, only one of the five decisions included expenses relating to the claimants disability within the expenditure calculation. This was due to the claimant detailing these expenses on their application form.

- 7.3.3 There is no documented evidence to confirm that the assessor has attempted to obtain details of any disability related expenses in the remaining four cases.

**7.3.4 Test 3 Conclusion**

Of the five decisions made pre Sandwell, there is only evidence in one case to suggest that the decision was made in accordance with the Sandwell ruling and the DWP DHP guidance (dated April 2013). However, in this one case the claimant included their disability expenses on the DHP application. Therefore, it is not possible, without further investigation to establish whether or not the assessor would have contacted the claimant for disability expenses, had they not been detailed on the application form.



**7.4 Test 4 - Whether, in those cases reviewed by the investigator, there is clear evidence of an assessment of the claimant's income and any expenditure, in relation to his/her disability, when determining whether or not to include disability related benefits and DLA care component, in the assessment of the claimant's disposable income.**

**7.4.1** In the thirty six cases examined Pre and Post Sandwell the following was identified:

Sample Test	Findings
1. Has DLA(c) been included in the income calculation.	DLA(c) care income included in 34 cases.  In the two decisions where DLA(C) income was disregarded the following was identified: <ul style="list-style-type: none"> <li>• DHP refusal - There is no evidence to suggest that the assessor contacted the claimant to obtain details of any expenses relating to the claimants disability.</li> <li>• DHP award - Although the income was disregarded, disability related care costs were included in the expenditure calculation.</li> </ul>
2. Has disability related expenses been included in the expenditure calculation.	Disability related expenses included in 7 cases.
3. Does the claimant's expenditure, as detailed in their DHP application form agree to what has been included in the assessor's calculation of expenditure.	In 11 cases the expenses on the assessor's calculation of expenditure matched the DHP application form.  For the remaining cases a discretionary decision had been made by the assessor to either restrict or increase costs recorded on the DHP application form, in accordance with the Council's procedures.
4. If DLA(c) expenses have not been included by the applicant in their DHP application form, has the assessor requested details of any expenses relating to the claimants disability.	There is no evidence in any of the decisions to suggest that the assessor contacted the claimant to obtain details of any expenses relating to the claimants disability.  NB: In some cases the assessors have contacted claimants for proof of other expenses e.g. debts.

**7.4.2 Test 4 Conclusion**

Evidence suggests that in all of the decisions made, assessors may not have had a complete breakdown of disability related expenditure, such as one off care costs and/or increased household costs, when they made the decision to disregard or include the claimants DLA(c) income, during the assessment of the claimant's entitlement to DHP.

There are only seven decisions (Pre and Post Sandwell) where there is evidence that DLA(c) income and expenditure has been considered and this may have only been due to the claimant including disability expenses on the DHP application form.

Ref	Conclusion
1	<p><u>Test 1 - Report Ref 7.1.10 (iii)</u></p> <p>It is evident from the test findings that in thirty three of the thirty six cases examined the DHP application has been assessed in accordance with Wirral Council's own procedures i.e. the training materials given to assessors during their DHP training.</p>
2	<p><u>Test 2 - Report Ref 7.2.60</u></p> <p>In summary, of the thirty one decisions made post Sandwell, there is only evidence in eight to suggest that the decision has been made in accordance with the Sandwell ruling and the DWP DHP guidance (dated August 2015 and February 2016). For six decisions the claimant had recorded the disability related expenditure on the DHP application form and due to a lack of evidence recorded by the assessor it has not been possible, without further investigation, to establish whether or not the assessor considered the Sandwell case and DWP DHP guidance when making their decision.</p>
3	<p><u>Test 3 - Report Ref 7.3.4</u></p> <p>Of the five decisions made pre Sandwell, there is only evidence in one case to suggest that the decision was made in accordance with the Sandwell ruling and the DWP DHP guidance (dated April 2013). However, in this one case the claimant included their disability expenses on the DHP application form. Therefore, it is not possible, without further investigation to establish whether or not the assessor would have contacted the claimant for disability expenses, had they not been detailed on the application form.</p>
4	<p><u>Test 4 - Report Ref 7.4.2</u></p> <p>Evidence suggests that in all of the decisions made, assessors may not have had a complete breakdown of disability related expenditure, such as one off care costs and/or increased household costs, when they made the decision to disregard or include the claimants DLA(c) income, during the assessment of the claimant's entitlement to DHP.</p> <p>There are only seven decisions (Pre and Post Sandwell) where there is evidence that DLA(c) income and expenditure has been considered and this may have only been due to the claimant including disability expenses on the DHP application form.</p>

## 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 7.2.61 (i)</u> The following should be undertaken in relation to the Council's DHP policy, procedures and training:</p> <ul style="list-style-type: none"> <li>(i) Review the Policy and EIA to ensure compliance with the DWP DHP guidance.</li> <li>(ii) Update the procedure manual and training materials, to ensure that they refer to the Sandwell case and they no longer direct 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.</li> <li>(iii) Ensure the changes are communicated to all assessment staff undertaking DHP assessments.</li> <li>(iv) Remind assessors to visit the LA Directories Limited link through the HB Online procedures on a regular basis, to ensure that they keep up to date with case law decisions which could impact decisions.</li> </ul>		
2	<p><u>Report Ref 7.2.61 (ii)</u> The following should be undertaken in relation to disability expenditure:</p> <ul style="list-style-type: none"> <li>(i) Amend the application form so that it includes a specific invitation for the claimant to provide details of spending, regular or otherwise, on items referable to dealing with or arising from a disability.</li> <li>(ii) Consider utilising the Disability Related Expenditure guidelines (as used by the Personal Finance unit) when undertaking assessments or;</li> <li>(iii) Consider implementing a process i.e. letter to claimant, to gather information about disability related expenses, where they are not detailed on the application.</li> <li>(iv) Amend the DHP tenant leaflet so that it advises a tenant that when they apply for DHP, to include any expenditure related to their disability.</li> </ul>		

Rec	Internal Control Recommendation	Person to Action	Implementation Target Date
3	<p><u>Report Ref 7.2.61 (iii)</u></p> <p>(i) If assessors choose to include DLA(c) income in a DHP assessment, they should consider any expenditure (including increased heating, washing or any other additional costs) that may be related to their disability.</p> <p>(ii) 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.</p>		
4	<p><u>Report Ref 7.2.61 (iv)</u></p> <p>The DWP guidance advises: LAs to give consideration to the following when assessing DHP claims:</p> <ul style="list-style-type: none"> <li>• a second member of staff could check the decision to ensure consistency;</li> <li>• visit claimants in their own home as it helps to confirm their circumstances and establish what further help or advice they require;</li> <li>• when a change of circumstances means that an award of HB or UC is reviewed, review the DHP award at the same time, as the change of circumstances may mean that the criteria for DHP are no longer met, or a different amount may be appropriate.</li> </ul>		
5	<p><u>Report Ref 7.2.61 (v)</u></p> <p>To ensure assessor decisions are made in accordance with ordinary principles of good decision making, i.e. administrative law and they are made fairly, reasonably and consistently throughout the year, reviews should be undertaken by Team Leaders. This would also allow for the identification of any training needs.</p>		



