

John Webb  
*Director*

Westminster House,  
Hamilton Street,  
Birkenhead,  
Wirral,  
Merseyside  
CH41 5FN

The Office of the Solicitor  
Department of Work & Pensions  
The Adelphi, 5<sup>th</sup> Floor  
1-11 John Adam Street  
LONDON  
WC2N 6HT

date 1 February 2010

CB/SF/DWP010210  
015 666 3630 Please ask for Chris Batman  
0151 666 4747  
chrisbatman@wirral.gov.uk

Dear Sir/Madam

I am writing to seek your advice regarding a difficult local issue in Wirral which the Council is seeking to resolve. As a result of a public interest disclosure, and subsequent investigations, the Council has decided that a number of individuals who have learning difficulties and live in "supported living tenancies" were incorrectly charged for services provided to them by the Council for a number of years. The period concerned was from 2000 to 2006. The Council wishes to reimburse the individuals concerned. Some of these individuals already have savings and potentially reimbursement of the amounts the Council is considering would take these savings beyond key threshold levels.

We are aware of the capital and notional capital provisions in the Income Support, Pension Credit and Housing Benefit regulations. We are also aware of the decision of the then Social Security Commissioner in R(IS)5/08 which concerned refunds by an adult social services department of charges wrongly levied under Section 117, Mental Health Act. Both appear to rule out any disregard for this type of payment. However we wish to be assured that there are no other provisions in the Income Support, Pension Credit and Housing Benefit regulations that would allow for any flexibility or discretion in the application of these rules in circumstances like these described above. Are you aware of any provisions that would allow us to mitigate the apparently inflexible effects of these rules?

Is there any other advice that you could offer to assist the Council in rectifying what it recognises as failure on its part without "penalising" users of services through loss of benefits?

Yours faithfully

CHRISTOPHER BATMAN  
Deputy Director  
Department of Adult Social Services

Mr C Batman  
Westminster House  
Hamilton Street  
Birkenhead  
Wirral  
Merseyside  
CH41 5FN

Our address

DWP Communications  
Room 1S25  
Quarry House  
Quarry Hill  
Leeds  
LS2 7UA

Our phone number

0113 251 9018

Website

[www.dwp.gov.uk](http://www.dwp.gov.uk)

Date 1<sup>st</sup> March 2010

Dear Mr Batman

Thank you for your letter of 1<sup>st</sup> February. Please accept my apologies for the delay in replying.

Unfortunately the capital provisions in the Income Support, Pension Credit and Housing Benefit Regulations do not allow for any discretion to ignore any reimbursements that will be made from the Council.

As you are aware, arrears of certain social security benefits and concessionary payments to compensate for official error can be disregarded for up to 52 weeks. A decision by the Social Security Commissioner in 2007 made it clear that amounts refunded by the local authority cannot be regarded as benefits in this context, as they are not paid or refunded on behalf of the Secretary of State.

You mention that you are aware of the capital provisions but I thought it may be helpful to set out the capital limits. For Pension Credit the capital threshold is £10,000. For those with capital above this amount, we assume a notional amount of income of £1.00 for each £500 or part of £500 over £10,000.

For Housing Benefit and Council Tax Benefit, the limits are the same as for Income Support and income-based Jobseeker's Allowance. The lower limit is £6,000 (or £10,000 for people of Pension Credit age). The upper limit is £16,000. Capital of between £6,000 and £16,000 will affect entitlement because for every £250 or part of £250 held over £6,000, the council will take into account £1 per week for each £500 or part £500 held over £6,000.

I realise this will be a disappointing response but I hope this information is helpful. Please let me know if you need anything further.

Yours sincerely

Linda Francis

