



## FIRST-TIER TRIBUNAL

### SOCIAL ENTITLEMENT CHAMBER

Held at Middlesbrough

on 27<sup>th</sup> March 2014

Before Judge K A Webb

1 <sup>st</sup> Appellant: Mrs S Thompson 2 <sup>nd</sup> Appellant: Mrs Willey	Tribunal Ref: SC227/12/05993
Respondent: Durham County Council	

### STATEMENT OF REASONS FOR DECISION

1. This appeal concerned a decision made by Durham County Council ( the council) on 20<sup>th</sup> July 2012 that Mrs Willey was required to pay the sum of £1246. 20. It was claimed by the council that that sum was an overpayment of Housing Benefit (HB).
2. This appeal was one of three linked appeals concerning tenants of Mrs Thompson who is a professional landlord. The other two cases concerned tenants of hers named Ms Davies and Ms Bailey. It had been agreed that the outcome of one appeal would apply to all three appeals – the only difference being the amount claimed by the council, It was further agree that this case in which Mrs Willey was the tenant would be the ‘lead case’. In the event, on the day of the hearing, the council lapsed the appeal relating to Ms Bailey as it had found an administrative error on its own files which meant that the appeal was unsustainable.
3. Neither of the tenants appeared and there were documents filed indicating that they had appointed Mrs Thompson to be their agent. Mrs Thompson represented herself and the council were represented by Ms Thexton accompanied by Housing Officer Ms Pearn. Mr Thompson was also present.
4. The following facts of the case were agreed between the parties as follows:-
5. Mrs Willey was a person entitled to claim and receive HB for the period 7/9/2009 to 29/11/2009.
6. HB had been paid to Mrs Willey in the sum of £1246.20 for that period.
7. Prior to the payments being made Mrs Willey had asked for the payments to be made direct to her landlord Mrs Thompson who trades as Teesside Properties (2) Ltd.
8. As a result of an official error the payments were made direct to Mrs Willey
9. Mrs Willey did not pass on any part of the HB she received to her landlord.

10. After reaching agreement on the above facts matters became more complicated.
11. Once the error had been realised the HB to which Mrs Willey was entitled was subsequently paid to Mrs Thompson but during the period in question she had not received full rent and had suffered financial loss of £1246.20. There followed protracted correspondence between her and the council in which she had claimed 'compensation' for her loss. The council made a payment to Mrs Thompson equivalent to her loss and sought to recover the monies they had paid to Mrs Willey by way of a claim for overpayment of HB. Mrs Thompson had intervened in those proceedings as a person affected by the decision.
12. There was a large amount of paperwork leading up to this hearing and at times during the hearing the arguments advanced cast more heat than light upon the issues in question but essentially the matter for me to decide was the nature of the payment to Mrs Thompson. She stated that it was a payment by way of 'compensation' for her loss. The Council argued that it was variously a 'second payment of HB' or a 'duplicate payment of HB'.
13. I found in allowing the appeal that the payment to Mrs Thompson was 'compensation' and that there is no provision in the legislation or regulations for a second or duplicate payment of HB.
14. The Council had been given an opportunity to produce any authorities upon which they wished to rely to support their claim that the payment to Mrs Thompson was a duplicate HB payment; they had not done so. The leading authority in relation to the matters raised in his appeal is the case of R(H) 2/08 where Commissioner (now Upper Tribunal Judge) Jacobs had to deal with similar arguments but 'reversed'. In that case the Local Authority was arguing that it *could* make a duplicate or second payment of HB which the Landlord was claiming. The Judgment is contained in the bundle at pages 102 – 106 and will not be repeated here. However UT Judge Jacobs makes it clear that such a payment is not provided for in the Regulations and cannot be made. Although there have been some amendments to the HB regulations since the date of that decision there is nothing which changes the position in relation to 'duplicate HB payments'.
15. I found that the Council had acted responsibly with integrity throughout this process and had done their utmost to avoid a scenario where Mrs Willey lost her home as a result of her failure to pay HB to the Landlord as a result of its own error. However, in doing so they had acted outside their powers in relation to the payment of HB and the only way in which the payment to Mrs Thompson could be understood or explained was if it were an ex gratia payment of compensation for her loss. That compensation is not recoverable from Mrs Willey.
16. Having decided the above no further findings needed to be made in relation to the other arguments advanced at the hearing in relation to any 'recovery' from Mrs Willey.

<b>Appellant: Mrs Willey</b> <b>Person Affected: Mrs Thompson</b> <b>Respondent: Durham County Council</b>	<b>Tribunal Ref: SC227/12/05993</b> <b>Date of Hearing: 27<sup>th</sup> March 2014</b>
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The above is a statement of reasons for the Tribunal's decision, under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed Tribunal Judge:	Webb	Date: 18 <sup>th</sup> April 2014 Amended 3 <sup>rd</sup> June 2014
Statement issued to		<i>Appellant on: 12.6.14</i> <i>Respondent on: 12.6.14</i>