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**The Rt Hon Thérèse Coffey MP**  
**Secretary of State**  
**Department for Work and Pensions**  
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*Sent electronically*

3 December 2021

*Dear Secretary of State*

### **Treatment of Historical Institutional Abuse Payments in Means-Tested Benefits**

A key priority at present across all tiers of Government (including Devolved Administrations and local government settings) is to support victims of historic sexual, physical and emotional abuse in institutional settings. As you know there are a number of schemes that have started to make payments to applicants including:

- Lambeth Council's Children's Homes Redress Scheme; and
- Northern Ireland's Historical Institutional Abuse Scheme.

In addition, there are schemes where we expect payments to commence in the new year, including:

- Islington Council's proposed Support Payment Scheme;
- Scottish Government's (SG's) Redress for Survivors (Historical Child Abuse in Care) Scheme.

Current legislation requires payments from these schemes to be taken into account when calculating means tested benefits apart from those elements disregarded by personal injury compensation provisions, which will likely result in claimants receiving lower or no benefits. To address this, you have asked the Department to quickly introduce new secondary legislation to exclude payments from these schemes when calculating means tested benefits.

The Department is working towards new regulations coming into effect early in January 2022. At this point payments from the four schemes will be indefinitely disregarded in full across all means tested benefits.

You also want to ensure that those receiving payments from any of these schemes before the new regulations take effect avoid potential reductions in means-tested benefits. HMT also support the policy intent.

As Accounting Officer, when assessing options for delivering this, I must ensure that my responsibilities as set out in Managing Public Money are met. This includes ensuring that all spending decisions meet expected propriety, regularity, value for money and feasibility standards.

My overall assessment is that disregarding payments from these schemes before regulations come into effect does not and cannot meet the propriety test. This is because for the propriety test to be met either (a) Parliament must have had an opportunity to scrutinise and approve the proposal or (b) the proposal must meet the conditions articulated in Managing Public Money for relying on the sole authority of the Supply and Appropriation Act.

Neither of these two conditions are met. On (a) I think it unlikely that Parliament would object to a small number of victims of abuse (or their next of kin) receiving payments without it affecting their entitlement to means-tested benefits. However, as regulations have not yet been laid to provide for relevant disregards, Parliament has not had an opportunity to scrutinise or approve the proposals.

I have therefore considered whether, in order to meet this key propriety test, we could exceptionally rely on the sole authority of the Supply and Appropriation Act. I have concluded that this is not possible as the following conditions are not met:

- The sole authority of the Supply and Appropriation Act must not be used to plug a gap before legislation is passed (MPM 2.5.4) – the Department is working towards new regulations being in place in early January 2022.
- Existing statute must be respected (MPM Box 2.6) - current regulations make clear that, unless specifically disregarded, compensation payments must be treated as part of a benefit claimant's capital.
- HM Treasury approval is required to rely on the sole authority of the Supply and Appropriation Act – as the above conditions are not met, despite supporting the overall policy objective, HM Treasury is not in a position to consent to the Department relying on the sole authority of the Act.

Nonetheless, in making a decision about how to treat these payments before the introduction of regulations to allow them to be fully disregarded, it is perfectly legitimate for you to seek to bring to bear other considerations beyond the strict tests placed on me as an Accounting Officer. These considerations include the sound policy objective of seeking to ensure that the benefit system does not, inadvertently, withdraw day to day support from the survivors of historic institutional abuse, those in harm's way or their next of kin. On that basis, you can legitimately decide that these payments should be disregarded across all means-tested benefits, and to rely on common law powers to do so even before regulations are put in place. This would, however, require a Ministerial Direction if you wanted to proceed in this way.

For this reason, I am seeking a formal written direction from you that the Department should implement a disregard of these payments until regulations come into effect because the proposed policy does not meet the propriety test of Managing Public Money. This would only apply to recipients of payments from the Northern Ireland Historical Institutional Abuse Scheme living in Great Britain and the London Borough of Lambeth scheme as these are the only schemes where payments have commenced. I will of course follow this direction, ensuring that the Department works promptly and sensitively to progress this policy.

Should you issue a direction, I am required to copy my letter and your direction to the Comptroller and Auditor General and the Treasury Officer of Accounts promptly, and also promptly publish them on the GOV.UK website.

I am very happy to discuss this letter with you if necessary.

Yours  
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**Peter Schofield CB**  
Permanent Secretary