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What is disguised profit?

Basic info

"Disguised profit" (or "secret profit") is an abuse of the more generous Housing Benefit rules that apply to not-for-profit landlords. The landlord appears to be a not-for-profit body, but the people who own or control that body use it as a de facto commercial company for their own advantage.

How is disguised profit detected?

A true not-for-profit body does not normally distribute dividends to shareholders and the people who run the organisation cannot normally increase their wealth through the value of their shareholding. Disguised profit gets around this by making payments in different ways to members, directors, trustees or others closely associated with the apparent not-for-profit body such as:

- Renting property at above market rent
- Paying inflated consultancy fees
- Conducting unnecessary or duplicate transactions
    - For example where a person is paid a salary or fee as an administrator for the not-for-profit body and also runs a commercial company providing property maintenance services. If that company carries out work for the not-for-profit body and its charges include management or administration fees this might be seen as double payment for the same service

As the Upper Tribunal noted in Wirral Borough Council v MF (HB) [2013] UKUT 291 (AAC) there is a heavy burden of proof on a local authority asserting that members, directors etc. are taking a disguised profit: it is tantamount to an accusation of dishonesty.

What are the consequences of a local authority deciding that disguised profit is being taken?

There are two possible consequences, which the authority might rely on as alternatives:

- The claimant's landlord is not a "housing association" or "voluntary organisation ", therefore the claimant does not occupy exempt or specified accommodation, or
- The claimant's liability has been created to take advantage of the Housing Benefit scheme and s/he is not entitled to benefit at all.

What are the signs that might make a local authority suspect that disguised profit is being taken?

The most visible information from the local authority's perspective is the breakdown of the claimant's rent or licence charge. Possible triggers for further investigation of disguised profit include:

- The "core rent" (basic charge for occupying the dwelling, without any service charges) exceeds the Local Housing Allowance for the dwelling
    - But there are often good reasons why exempt accommodation is more

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expensive than general needs accommodation: that is the whole point of making it exempt from normal HB restrictions!

- Service charges covering the cost of goods or services procured from members, directors, associated companies etc appear to be higher than the local authority's benchmark
- The mere fact that accommodation or other goods and services are supplied by people closely associated with the landlord might be a trigger for further investigation in itself, but as the Upper Tribunal says in the Wirral case referred to above this alone is not inconsistent with not-for-profit status

None of these "triggers" is conclusive on its own but landlords should expect scrutiny if these factors are present.