



## Audit and Risk Management Committee

<b>Date:</b>	<b>Wednesday, 23 September 2009</b>
<b>Time:</b>	<b>6.00 pm</b>
<b>Venue:</b>	<b>Committee Room 1 - Wallasey Town Hall</b>

**Contact Officer:** Mark Delap  
**Tel:** 0151 691 8500  
**e-mail:** [markdelap@wirral.gov.uk](mailto:markdelap@wirral.gov.uk)  
**Website:** <http://www.wirral.gov.uk>

---

## AGENDA

### 1. DECLARATIONS OF INTEREST

Members are asked to consider whether they have personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they are.

### 2. ADULT SOCIAL SERVICES: CHARGING POLICY - SERVICE USERS RESIDING AT 'IN-HOUSE' SUPPORTED LIVING UNITS (Pages 1 - 72)

### 3. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR

This page is intentionally left blank

## WIRRAL COUNCIL

### AUDIT AND RISK MANAGEMENT COMMITTEE

23 SEPTEMBER 2009

### REPORT OF THE CHIEF INTERNAL AUDITOR

### ADULT SOCIAL SERVICES - CHARGING POLICY - SERVICE USERS RESIDING AT 'IN HOUSE' SUPPORTED LIVING UNITS

#### 1. EXECUTIVE SUMMARY

1.1. In October 2007 a former employee ('the Whistleblower') in the Department of Adult Social Services ('DASS') brought a number of concerns to the attention of the Audit Commission under the Public Interest Disclosure Act 1998 ('PIDA'). The Audit Commission advised the Whistleblower that there were two areas the Commission considered relevant to their responsibilities, including the Council's application of the Department of Health's Fairer Charging Policy.

1.2 The Audit Commission's resulting report, *Adult Social Services – Follow up of PIDA Disclosure*, (and an accompanying Action Plan) ('the PIDA Report') was completed in August 2008 (see Appendix 1). The PIDA Report was considered by this Committee in September and November 2008. For reasons that are familiar to Members (and which are set out in the body of this report) consideration of Internal Audit's investigation relating to the matters set out in this report was deferred until this meeting.

1.3 This report is in response to this Committee's resolution on 30 September 2008 that:

*'... officers investigate whether a charging policy had been in place in 1999<sup>1</sup> and, if so, whether or not it had been approved by Members'.*

Internal Audit has undertaken this investigation on behalf of the Council and has shared with and agreed this report with all relevant senior officers. In particular, the legal opinions expressed in this report represent the views of the Director of Law, HR and Asset Management.

1.4 The context of this issue is broadly set out in paragraphs 9, 10 and 11 of the PIDA Report<sup>2</sup> and may be summarised as follows.

1.4.1 In the 1990s, the delivery of services for people with learning disabilities underwent fundamental change. The traditional large residential care homes were closed down. The residents were transferred to smaller

---

<sup>1</sup> Members' reference to 1999 was probably taken from the PIDA Report. Internal Audit's investigation has established that the relevant period commenced in 1997, not 1999.

<sup>2</sup> Paragraphs 9-11 of the PIDA Report are set out in paragraph 2.2 of this report, as well as in Appendix 1.

units of accommodation, where service users are helped to live more independent lives. This is the ethos behind Supported Living.

- 1.4.2 In late 1997, the Council closed Esher House Residential Care Home in Beechwood and relocated the residents to three new, Housing Association owned Supported Living Units. These properties were located in Bermuda Road, Curlew Way and Edgehill Road in Moreton.
- 1.4.3 The residents in Bermuda Road, Curlew Way and Edgehill Road were tenants and paid rent to their respective landlords (which was met by Housing Benefit). In addition, the residents required money for their (new) day to day living expenses (arising from their greater independence which varied, according to their needs).
- 1.4.4 After the closure of Esher House, the Council continued to provide care and support for the residents in Bermuda Road, Curlew Way and Edgehill Road. The level of care and support provided by the Council depended upon the individual needs of each resident, as assessed by their Social Worker. This provision of care and support clearly had a cost implication for the Council.
- 1.4.5 With the exception of 27 Balls Road, Birkenhead, all Supported Living accommodation is provided by Housing Associations or the private sector. However, the care and support provided to residents in these properties is provided either by the independent sector or by DASS. Where the care and support is provided by staff from DASS the facility is generally referred to as an 'in house' Supported Living Unit (even though the 'house' or building itself is generally not owned by the Council). Where the care and support is provided by staff from the private sector, the facility is generally referred to as a 'private' Supported Living Unit.
- 1.4.6 Prior to the closure of Esher House Residential Care Home, its residents were charged by the Council in line with the Department of Health's Guidance '*Charging for Residential Accommodation Guidelines*' ('CRAG').
- 1.4.7 Between 1997 and 2006, the residents in Bermuda Road, Curlew Way and Edgehill Road were still charged for the care and support provided by Wirral Council staff. The charges were in line with a new charging policy developed by Wirral Council. It is this charging policy that the Whistleblower has described as a 'Special Charging Policy'.
- 1.4.8 This new charging policy or 'Special Charging Policy' has also been described as the application of a 'Modified CRAG'. This is because the 'Special Charging Policy' had the effect of leaving the service users with more disposable income (with which to meet their newly increased day to day living expenses), than would have been the case under a pure application of CRAG. The principle of a charging policy (for the provision of care and support to residents at 'in house' Supported Living Units) allowing more disposable income to meet increased daily living expenses is logically sound. Legally, any such charges must be 'reasonable' and, under the Council's Constitution, such charges must be duly authorised.

- 1.4.9 The Whistleblower alleges that this 'Special Charging Policy' was not approved by Members. If correct, this allegation might mean that the charges levied were unlawful.
- 1.4.10 The Whistleblower also alleges that the 'Special Charging Policy' was 'excessive' that it took an unreasonable amount of disposable income from vulnerable adults. If correct, this allegation, too, might mean that the charges levied were unlawful. This is because, as indicated above, the Council's legal power to charge is limited to what is 'reasonable'.
- 1.4.11 On 23 November 2001, the Department of Health issued a Local Authority Circular, LAC (2001) 32, entitled '*Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities*'. This Guidance applies to care and support provided in Supported Living Units. The Guidance clearly set out that local authorities should implement Fairer Charging from 1 April 2003.
- 1.4.12 Wirral Council did not apply Fairer Charging to service users residing at any 'in house' Supported Living Units (including Bermuda Road, Curlew Way and Edgehill Road) until 1 February 2006 onwards.
- 1.4.13 Application of Fairer Charging in relation to the residents at Bermuda Road, Curlew Way and Edgehill Road resulted in substantial reductions in the amounts they were asked to pay the Council. The average charge under 'Modified CRAG' was £80 per week. This reduced to an average charge of £18 per week under Fairer Charging.
- 1.4.14 The third strand to the Whistleblower's allegations is that the Council's three year delay in applying Fairer Charging to service users residing at Bermuda Road, Curlew Way and Edgehill Road (from 1 April 2003 until 1 February 2006) was 'unreasonable' and had a clearly detrimental financial impact on those residents i.e. their charges should have been reduced much earlier.
- 1.4.15 The fourth strand to the Whistleblower's allegations is that the charges levied for care and support at 'in house' Supported Living Units were not applied consistently across Wirral. Whilst charges were levied at Bermuda Road, Curlew Way and Edgehill Road, the Whistleblower alleges that the Council failed to assess residents at other 'in house' Supported Living Units across the Borough. As a result, the Whistleblower alleges that the Council failed to collect '*large sums of money*'.
- 1.4.16 The Whistleblower has also raised the question of reimbursing the tenants at Bermuda Road, Curlew Way and Edgehill Road if they were charged unlawfully or excessively.
- 1.5 Before the Whistleblower brought these matters to the attention of the Audit Commission, they were raised within the Council under the Authority's Grievance Procedure. In this Grievance, the Whistleblower's

concerns in relation to Supported Living and Fairer Charging may be summarised as follows:

- a) A Special Charging Policy was levied at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006.
- b) The Special Charging Policy was not approved by Members and was thus unlawful.
- c) Those charges were also excessive.
- d) The Council lost large sums of money due to a failure to assess service users at other Supported Living Units across Wirral prior to 2006.
- e) The Council delayed unreasonably in implementing Fairer Charging for service users at Supported Living Units and this had an adverse financial consequence for the service users at Bermuda Road, Curlew Way and Edgehill Road.
- f) The Council should reimburse the service users at Bermuda Road, Curlew Way and Edgehill Road for monies that were 'unlawfully levied over a prolonged period of time'.

1.6 The extent to which the Whistleblower's concerns were raised (or should have been recognised) as a protected disclosure (Whistleblow) is addressed later in this report.) In addition, the extent to which the Whistleblower's eventual withdrawal of his Grievance also concluded any Whistleblow was the subject of subsequent disagreements with the Council. This is also addressed later in this report.

1.7 The key findings of this Internal Audit may be summarised as follows.

1.7.1 ***Was there a Special Charging Policy in relation to the provision of care and support by Council staff at 'in house' Supported Living Units?***

1.7.2 No Committee reports and only one document seen by Internal Audit (which is discussed in detail below) uses the phrase 'Special Charging Policy'. No file titled 'Special Charging Policy' has been found. However, between late 1997 and early 2006, the Council applied a policy of charging for the provision of care and support by Social Services staff at Bermuda Road, Curlew Way and Edgehill Road. This charging policy does not appear to have been applied at other 'in house' Supported Living Units across Wirral.

1.7.3 On balance, it is considered to be a reasonable use of language to describe the charging policy implemented at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006 as a 'Special Charging Policy'. However, this charging policy is the same as that referred to as 'Modified CRAG' (see paragraph 1.4.8, above) and in line with the charging policy approved by Social Services Committee in September 1997 (see paragraph 1.7.7 below).

1.7.4 ***Was a Charging Policy in relation to the provision of care and support by Council staff at 'in house' Supported Living Units approved by Members?***

- 1.7.5 Yes, albeit that for a long time during this investigation the contrary appeared to be the case.
- 1.7.6 Up until the final week of preparing this report, no evidence was produced to Internal Audit to suggest that Members had approved a charging policy in relation to the provision of care and support by Council staff at 'in house' Supported Living Units.
- 1.7.7 However, in the final week of preparing the report, officers in DASS located a hard copy of a report to Social Services Committee on 3 September 1997 entitled 'Report on Future Services for People with Learning Disabilities'. Committee Services then located the related minute. (The report and minute are attached at Appendix 2.) Paragraph (3) of the minute records Members' approval of a policy for charging service users in 'independent living situations'. Officers have established that the charges levied at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006 complied with this Committee resolution.
- 1.7.8 ***Was the Charging Policy in relation to the provision of care and support by Council staff at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006 lawful? Was it reasonable?***
- 1.7.9 The answer to these questions is time dependant. Until April 2003 the charges levied were, on balance, probably reasonable and lawful. However, between April 2003 (when Fairer Charging should have been brought in) and February 2006 (when Fairer Charging was actually introduced at 'in house' Supporting Living Units in Wirral), the charges were probably unreasonable so far as the charges exceeded what would have been levied under Fairer Charging. To that extent, the charges levied were also unlawful.
- 1.7.10 The Council's legal power to charge is limited to what is 'reasonable'.
- 1.7.11 The September 1997 Committee report had appended to it four models showing how the proposed charging policy would affect different categories of service user. These models show that the Council's charges were identical to service users' income derived from the 'care' element of their Disability Living Allowance (if any) and any Severe Disability Premium. This seems to be an intrinsically reasonable approach and is clearly linked to income (although not overtly to the level of services provided).
- 1.7.12 On the other hand, the charging policy was not applied consistently across the Borough. In addition, the Whistleblower has given alleged examples of instances where the implemented charging policy led to financial hardship. On balance, however, officers consider that the policy approved by Members on 3 September 1997 was, at the time reasonable and thus lawful.
- 1.7.13 Whilst the charging policy approved by Members in 1997 may have been reasonable in 1997, the question of reasonableness needs to be

reassessed in the light of the 23 November 2001, publication by the Department of Health of '*Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities*'. This Guidance clearly stipulated that Councils should implement Fairer Charging (for all service users in receipt of Home Care and other non-residential Social Services) from 1 April 2003.

1.7.14 As mentioned above, Wirral did not implement Fairer Charging to service users residing at Bermuda Road, Curlew Way and Edgehill Road until 1 February 2006 onwards. This delay is hard to justify in any circumstances, especially given that it had a clearly adverse financial impact on service users.

1.7.15 There is a compelling argument for concluding that so far as service users at Bermuda Road, Curlew Way and Edgehill Road paid in excess of what they would have paid had the Council implemented Fairer Charging on 1 April 2003, then the charges were unreasonable and hence unlawful.

1.7.16 ***Were charges for care and support at 'in house' Supported Living Units applied consistently across Wirral? Did the Council fail to collect large sums of money?***

1.7.17 During the Audit it was identified that there was a very substantial delay in undertaking financial assessments for 63 of the 83 current service users receiving care and support from Council staff at 'in house' Supported Living Units (excluding those at Bermuda Road, Curlew Way and Edgehill Road). The other 'in house' Supported Living Units came into operation at various times from mid 1998 onwards.

1.7.18 These service users were receiving the same level of care and support as those in Bermuda Road, Curlew Way and Edgehill Road. However, they did not get charged until they were financially assessed under Fairer Charging in 2006. This failure to assess service users does not appear to have been a result of a conscious policy decision in DASS. Rather, it seems (on the basis of the available evidence), to have been a failure by officers to apply with consistency the decision taken by Members at Social Services Committee in September 1997.

1.7.19 Internal Audit had assessed that had Fairer Charging been implemented across all 'in house' Supported Living Units in Wirral from 1 April 2003, the Council would have received an additional £156,400 in income between April 2003 and February 2006. Legally the Council is precluded from seeking to recover this money retrospectively: the money is lost.

1.7.20 If it was reasonable and lawful for Social Services to charge for care and support at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2003, it would have been equally lawful to have applied a consistent approach to charging at other 'in house' Supported Living Units across Wirral during these years. This was not done. Whilst financial records from this period are incomplete, if it is assumed that benefits would have been maximised (and that service users would have been in receipt of



Disability Living Allowance ('care' component) and Severe Disability Premium), Internal Audit consider that the Council lost out on further potential income in the order excess of £300,000 for the period from 1998 to April 2003.

1.7.21 Moreover, current DASS records do not allow reliable calculations to be made in respect of any potential loss of income from former service users who are no longer resident at the 'in house' Supported Living Units in question. Therefore, Internal Audit have not been able to calculate the full extent of the potential income lost by the Council through not financially assessing these service users. (The calculations in respect of service users at Bermuda Road, Curlew Way and Edgehill Road are more complete because of detailed information provided to Internal Audit by the Whistleblower.)

1.7.22 ***Should any service users be reimbursed in relation to unlawful or unreasonable charges?***

1.7.23 An officer in DASS stated to the Audit Commission that service users who were overcharged as a result of the late implementation of Fairer Charging will be reimbursed. This statement was included in the PIDA Report and was supported by the Director of Adult Social Services at this Committee on 4 November 2008.

1.7.24 Members are recommended to consider endorsing the principle of reimbursement. However, regard will need to be given to the financial and other consequences of reimbursement for the service users. If reimbursement is made by way of lump sum, this may lead to a disproportionate loss of benefit entitlement and no appreciable financial benefit. It is likely that individual solutions will need to be found in each case of excessive charging and agreement reached, on a case by case basis, with the full involvement of the service users and their family and advisers.

1.8 The findings within this Report are based on the review of a large number of documents obtained from numerous sources. Individuals (including the Whistleblower) have, on a number of occasions, been asked whether they have or are aware of any other documents which would be pertinent to this review. No additional documents have been provided to Internal Audit. Officers are grateful for the support of all individuals and for the information they have provided during this review.

## 2. **BACKGROUND**

2.1. In October 2007 the Whistleblower in DASS brought a number of concerns to the attention of the Audit Commission under PIDA. The Audit Commission advised the Whistleblower that some of these matters were outside their remit as the Council's External Auditors. However, there were two areas the Audit Commission considered relevant to their responsibilities:

- Arrangements for the commissioning and monitoring of contracts for Supported Living and Supported People services, to ensure the Council is receiving value for money; and
- Application of the Department of Health's Fairer Charging policy.

These matters were investigated by the Audit Commission and the resulting report, *Adult Social Services – Follow up of PIDA Disclosure*, (and an accompanying Action Plan) ('the PIDA Report') was completed in August 2008 (see Appendix 1).

2.2. Within the main conclusions of the PIDA Report, the following is stated:

*'Application of the fairer charging policy*

*'9 The Council was slow in fully applying the Fairer charging guidance which was issued in September 2003. The Council's Fairer charging policy was not applied in full until 2007.<sup>3</sup>*

*'10 One of the allegations raised under PIDA was that there was a 'Special Charging policy' applied by the Social Services Department, dating back to 1999<sup>4</sup>, that covered Supported Living service users with Learning Disabilities. The allegation made was that the policy had not been approved by Committee and was 'excessive and unlawful'. Our review has confirmed that a charging policy was applied at some Supported Living establishments. It is not clear from discussions with officers the extent to which the charging policy was in place or whether it was approved by Members.*

*11 During its review of its charging policy, the Social Services Department informed service users that where charges under Fairer Charging would be lower than the original charges, compensation would be awarded from April 2003. No such compensation has yet been given. When Fairer Charging was introduced, officers and Members agreed a prioritised programme for the review of different service groups, with Learning Disabilities later in the review programme. A Learning Disabilities review team is to be formed in August 2008. Based on individual financial assessments, the team will review for each service user the level of charges to be made under fairer charging and the level of financial contributions to be made by service users. Officers have confirmed that service users will be reimbursed where it becomes clear they have contributed more than was due under Fairer Charging. This review is planned to be completed by March 2009.'*

<sup>3</sup> Internal Audit's investigation has established that the dates referred to in this quotation are not correct. On 23 November 2001, the Department of Health issued a Local Authority Circular, LAC (2001) 32, entitled 'Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities'. This Guidance stated that Councils should implement Fairer Charging from 1 April 2003. However, Wirral Council did not apply Fairer Charging to service users residing at all Supported Living Units until 1 February 2006 onwards.

<sup>4</sup> Internal Audit's investigation has established that the relevant year was 1997, not 1999.

2.3 The PIDA Report was considered by this Committee on 30 September 2008. Members resolved that:

*(1) the PIDA Report be referred to Cabinet and Overview and Scrutiny for consideration;*

*(2) that the Action Plan be redrafted; and*

*(3) that officers investigate whether a charging policy had been in place in 1999 and, if so, whether or not it had been approved by Members.*

This report is in response to the third resolution. Internal Audit has undertaken this investigation on behalf of the Council and has shared with and agreed this report with all relevant senior officers. In particular, the legal opinions expressed in this report represent the views of the Director of Law, HR and Asset Management.

2.4 The matter was further considered by this Committee on 4 November 2008 when separate reports were submitted by the Director of Adult Social Services and the Director of Finance. In the time available since the 30 September Committee meeting, officers were not able to investigate conclusively the issue of the alleged 'Special Charging Policy' and this was to be the subject of a further report to a subsequent meeting. Members noted both the reports submitted and approved a revised Action Plan responding to the PIDA Report.

2.5 During an adjournment of that Committee meeting on 4 November, additional documentation was provided to the Director of Law, HR and Asset Management. Members were advised that matters within this documentation required further investigation. Following consideration of the information provided during the November Committee meeting, two senior officers, in Adult Social Services, were suspended from work on 6 November 2008.

2.6 As Members will be aware, after the 4 November 2008 meeting of this Committee, the Director of Law, HR and Asset Management advised that consideration of the wider issues arising from the PIDA Report should be deferred pending conclusion of all internal Council disciplinary procedures. The Council's disciplinary process required the matter to be referred to the Appeals Sub-Committee of the Council's Employment and Appointments Committee (comprising one Member from each of the three political groups represented on the Council). This followed an Independent Investigation and took place over three days in July, commencing on Friday, 3 July 2009. This resulted in unanimous decisions in relation to both suspended officers. The Council is required by law to maintain confidentiality in relation to the outcome of disciplinary hearings.

2.7 Now that the disciplinary process has now been concluded, the outstanding issues relating to the PIDA Report may be debated by Members. It is important to note that the disciplinary process was concerned with the knowledge of the suspended officers (and the alleged

non-disclosure of such knowledge); it was not about the existence of a Special Charging Policy.

- 2.8 Before the Whistleblower brought his concerns to the attention of the Audit Commission under PIDA, they were raised within the Council under the Authority's Grievance Procedure. This is dealt with later in this report (commencing at paragraph 5.10).
- 2.9 The background to the issues addressed in this report is in the 1990s, and relates to changes to the delivery of services for people with learning disabilities. The traditional large residential care homes were closed down and residents moved to smaller properties, where they were 'supported' in living more independent lives. This is the ethos behind Supported Living.
- 2.10 In late 1997, the Council closed Esher House Residential Care Home in Beechwood and relocated the residents to three new Housing Association owned Supported Living Units at Bermuda Road, Curlew Way and Edgehill Road in Moreton.
- 2.11 The residents were the tenants of Housing Associations to whom they paid rent (met by Housing Benefit). In addition, the residents required money for their new day to day living expenses arising from their greater independence. However, the Council continued to provide care and support for the residents at these three properties, according to the individual needs of each resident, as assessed by their Social Worker.
- 2.12 Provision of care and support clearly has a cost implication for the Council. Prior to the closure of Esher House, its residents were charged by the Council in line with the Department of Health's Guidance '*Charging for Residential Accommodation Guidelines*' ('CRAG'). Between 1997 and 2006 the residents in Bermuda Road, Curlew Way and Edgehill Road were charged for the care and support provided by Wirral staff in line with a Charging Policy developed by the Council. It is this charging policy that the Whistleblower has described as a 'Special Charging Policy'.
- 2.13 This Charging Policy has also been described as the application of a 'Modified CRAG'. This is because the Wirral Charging Policy had the effect of leaving the service users with more disposable income (to reflect their greater independence) than would have been the case under a strict application of CRAG.

### **3. INTERNAL AUDIT WORK UNDERTAKEN**

- 3.1. The objective of the Audit was to investigate the issues set out at paragraphs 8, 9 and 10 of the PIDA Report and to respond to this Committee's resolution on 30 September 2008 that:

*'... officers investigate whether a charging policy had been in place in 1999 and, if so, whether or not it had been approved by Members'.*

3.2. The audit work undertaken involved:

- Interviewing Managers responsible for systems, policies and procedures in operation in the Department of Adult Social Services.
- Interviewing the Whistleblower and reviewing the Whistleblower's original Grievance and Grievance Appeal documentation, plus the additional documents handed to the Director of Law, HR and Asset Management at the Committee meeting on 4 November 2008.
- Reviewing and evaluating all of the relevant documentation and papers available relating to charging.
- Interviewing the Area Group Managers responsible for the relevant Supported Living Units and visits to West Wirral and Birkenhead Group Units.
- Interviewing Managers responsible for undertaking financial assessments to calculate service user charges.
- Reviewing and evaluating the financial assessments for service users who resided or still reside at the relevant 'in house' Supported Living Units.
- Inviting both the Whistleblower and the Audit Commission to share with Internal Audit any further documents they wished to have considered as part of this audit.

3.3. Understandably, it was sometimes very difficult to arrive at definitive answers for issues concerning action taken as long ago as 1997. Inevitably, documents were not always still available. Also, many key staff who were present at the relevant time have since left the Council. Equally, those officers who remain with the Council were generally in much more junior positions when important decisions were taken and have unclear or incomplete memories of discussions and action taken by their former senior managers.

#### **4. THE ALLEGATION OF A SPECIAL CHARGING POLICY**

- 4.1 In the Whistleblower's original Grievance (dated 18 September 2006), there is a comparatively brief reference to the alleged 'Special Charging Policy'. However, whilst this was included as part of a section alleging malpractices by private sector service providers, the core contentions of the Whistleblower in this regard were all articulated. Reference was made to Bermuda Road, Curlew Way and Edgehill Road in Moreton. Reference was made to the 'Special Charging Policy' not being applied at other Supported Living Units (and income thus being lost). And, reference was made to the 'Special Charging Policy' lacking any Member approval.
- 4.2 The Whistleblower's May 2007 submissions to the Employment Appeals Sub-Committee, identified concerns about the alleged 'Special Charging Policy' with greater clarity. In this Appeal documentation, the Whistleblower set out ten questions to be addressed by the former Director of Adult Social Services. Of these ten questions, only Question Six related directly to Fairer Charging.

- 4.3 Question 6 set out allegations that the Council had, by its *'unreasonable delay'* in introducing Fairer Charging, *'lost out on large sums of money'* from some tenants, *'whilst simultaneously taking money from other tenants'* (at Bermuda Road, Curlew Way and Edgehill Road in Moreton) *'to which it had no legal right'*. The Whistleblower also enquired: *'Are there any plans to reimburse tenants of these addresses for monies that were unlawfully levied over a prolonged period of time?'*
- 4.4 The Whistleblower alleges that the 'Special Charging Policy' was not approved by Members. If correct, this allegation might mean that the charges levied were unlawful.
- 4.5 The Whistleblower also alleges that the 'Special Charging Policy' was 'excessive': that it took an unreasonable amount of disposable income from vulnerable adults. If correct, this allegation too, might mean that the charges levied were unlawful. This is because the Council's legal power to charge is limited to what is 'reasonable'.

## **5. FINDINGS**

### **5.1. Supported Living in Wirral**

- 5.1.1. Supported Living service users live in residential units identified by DASS. Care and support, such as supervision and assistance, may be for a few hours a week, everyday, overnight or 24 hours a day.
- 5.1.2. The care and support is carefully planned and is based on the service user's Needs Assessment carried out by their Social Worker. In addition to the Needs Assessment, service users should be financially assessed as to what they will be charged towards the provision of the care and support they receive.
- 5.1.3. Supported Living accommodation is provided by Housing Associations or the private sector. However, the care and support provided to residents in these properties is provided either by the independent sector or by DASS. Where the care and support is provided by staff from DASS the facility is generally referred to as an 'in house' Supported Living Unit (even though the 'house' or building itself is generally not owned by the Council). Where the care and support is provided by staff from the private sector, the facility is generally referred to as a 'private' Supported Living Unit.
- 5.1.4. In Wirral, 'in house' Supported Living Units are provided within four area groups: West Wirral; Birkenhead; Livingstone Gardens; and Wallasey.
- 5.1.5. Service users residing at both 'in house' and 'private' Supported Living Units have their own accommodation and each enter into a tenancy agreement with a Landlord. All service users pay rent to their Landlord and receive varying levels of Housing Benefit payments towards their accommodation costs.

- 5.1.6. The level of dependency for each service user varies considerably across the four area groups. The service users in 'in-house' Supported Living Units in West Wirral, Wallasey and Livingstone Gardens, require a medium to high level of care and support whereas those in the Birkenhead area require a lower level of care and support.
- 5.1.7. In the three area groups where the level of dependency is medium to high, service users require more help in undertaking daily tasks. As the service users are more dependent, a communal 'daily living' fund is in place. The communal 'daily living' fund is used to buy food and daily consumables for the service users residing at the Unit. The contribution is a fixed weekly amount and subject to periodic review. The weekly contribution paid by the service user at each 'in house' Supported Living Unit is agreed by the tenants themselves and not by DASS.
- 5.1.8. In the Birkenhead area group, as the level of support required is lower, the service users are able to undertake daily living tasks such as cleaning, shopping and preparing their own meals. They look after themselves as if in their own home and do not operate a communal 'daily living' fund.

## **5.2. Review of documents, files, committee agendas, reports and minutes**

- 5.2.1. The Audit Commission's investigation of the Whistleblower's allegations confirmed that a charging policy was applied at some 'in house' Supported Living establishments, but that: *'It is not clear ... the extent to which the charging policy was in place or whether it was approved by Members.'* (PIDA Report, paragraph 10.)
- 5.2.2. To ascertain whether the implemented charging arrangements were approved by Members, Internal Audit requested a number of documents, files, Committee Agendas, Reports and Minutes from staff within DASS, particularly anything that might be construed as relating to a 'Special Charging Policy'. Despite extensive enquiries, no file entitled 'Special Charging Policy' was found.
- 5.2.3. In the final week of preparing this report, officers in DASS located a hard copy of a report to Social Services Committee on 3 September 1997 entitled 'Report on Future Services for People with Learning Disabilities'. Committee Services then located the related minute. (The report and minute are attached at Appendix 2.) These are very significant documents.
- 5.2.4. In the 3 September 1997 report, Mr Miller's predecessor as Director of Social Services<sup>5</sup>, reported that the Committee had already agreed proposals on the Community Living Strategy.

---

<sup>5</sup> Mr Miller's predecessor as Director of Social Services ceased employment with the Council on 30 April 1998. Mr Miller was appointed to the post of Director of Social Services on 7 August 1997 and commenced work at the Council on 1 December 1997, but as Director Designate until his predecessor left the Authority in 1998.

5.2.5 The Community Living Strategy is described as enabling people to move from hostel settings into tenancies, offered by Housing Associations, in smaller settings. The 3 September 1997 report recognised that there were financial consequences flowing from the adoption of this strategy. The then Director proposed that all independent living schemes be organised to:

- Provide tenancies on a basis where Housing Benefit was claimed to a level to cover all maintenance responsibilities and the furnishings and fittings of any communal areas; and
- Ensure that every tenant was assessed by the Department of Social Security for benefit levels according to their need for support and that each tenant was then charged at the rate of dependency assessed for the care package he or she needed.

5.2.6 Members resolved (resolution (3)) that:

*'... in independent living situations, tenants in receipt of the Disabled Living Allowance Care Component and/or the Severe Disability Premium, be charged the amount offered by those benefits to contribute to the cost of their care packages.'*

5.2.7 Since the 1997 report was discovered, officers have established that the charges levied at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006 complied with this Committee resolution.

5.2.8 Earlier in the investigation, Internal Audit were given copies of notes from a Social Services Managers' meeting, on 3 October 1997, titled 'Charging Policy re: Independent Living Schemes'. A copy of this note is attached at Appendix 3. This note (which makes no reference to the 3 September 1997 Social Services Committee meeting) indicates that there were officer discussions around setting a charging policy in 1997. The notes state:

*'1. Agree that the charging policy for care services will be based upon normal Part 3<sup>6</sup> assessment system excepting that:*

*Personal allowance will be equal to Income Support Personal Allowance plus Income Support Disability Premium (currently equal to £70.10 for a person aged over 25).'*

5.2.9 Notwithstanding the lack of reference in these notes to the earlier Committee decision, this is consistent with Members' decision on 3 September 1997. This conclusion is reached because, in all four examples of 'potential charging' appended to the 1997 report, the service user retains a minimum of £70.10, which is described as: *'Income Support (including Severe Disablement Allowance<sup>7</sup> and Disability Premium).'*

---

<sup>6</sup> The reference to 'Part 3' is to that Part in the Department of Health's 'Charging for Residential Accommodation Guidelines' ('CRAG').

<sup>7</sup> Or 'SDA'.



5.2.10 A number of Committee Reports and Minutes have been provided and examined relating to charging but, again, there is no document including the wording 'Special Charging Policy'.

5.2.11 The subject of applying the Fairer Charging Policy to non-residential services and the proposal of introducing a unique charging policy for people at 'in house' Supported Living was discussed by officers (and Reports presented to Members) on a number of occasions since 1999 as part of the reviewing of charges and the introduction of Fairer Charging. These are described in the following paragraphs.

5.2.12 Report to the Special Social Services Committee, 29 September 1999 - Charging Policy Review. The Executive Summary states that:

*'Members are asked to consider proposals for a revised method of charging for non-residential services; to agree the principles and give licence for a public consultation exercise'*

Minute 54 resolved:

*'Item 3 - Agree the principles for the revised method of charging for non-residential services detailed in this report pending consultation.'*

*'Item 4 - Agree to a public consultation exercise to be carried out as soon as possible.'*

5.2.13 Report to the Special Social Services Committee, 26 July 2000 - Charging Policy Review. The Executive Summary specifies:

*'The purpose of this report is to inform Members of the outcome of the consultation exercise on proposed charges to the charging policy for non-residential services and to present recommendations.'*

Revised Charging Policy - The Proposals, 4.24 states:

*'Service users who reside in Supported Living Accommodation are not included under the proposed Policy. A further report will be submitted to the Adult Community Care Panel and Social Services Committee outlining charging arrangements for this client group.'*

5.2.14 Extract of notes from a Social Services Departmental Management Team Meeting 4 July 2000 discussing the draft Committee Report:

*'Supported Living - Where ever we are supporting people there are care costs which are legitimate to pay. Therefore develop price structure which reflects level of care from low to intensive. Maintain as separate policy, dropping the label 'Special' and remove any requirement for charges from the non-residential Charging Policy.'*

A Manager recalls that this related to the wording in the Charging Policy Review draft report, paragraph 4.24. The recollection was that the then

Director (Mr Miller) was to produce a charging policy specifically for service users residing at 'in house' Supporting Living Units.

5.2.15 A review of subsequent Council Agendas, Reports and minutes for the Adult Community Care Panel and Social Services Committee has been undertaken. No further reports to Members detailing a charging policy, or the mechanism for charging service users residing at 'in house' Supported Living Units has been found.

5.2.16 Report to Cabinet on the 20 March 2003 - Implementing the Fairer Charging Policies for Home Care and other Non Residential Social Services. The report details how the Fairer Charging Policy will be applied to non-residential service users from April 2003. It is not clear from the report that the Fairer Charging Policy, as approved by Members, was to be implemented for service users residing at 'in house' Supporting Living Units in the same way it was to be applied to service users living in their own homes.

5.2.17 Report to the Social and Health Services Select Committee, 18 January 2005 - Social Services - Options for Re-engineering Savings 2005-06. Paragraph 1.4.5 states:

*'Alternately Members could propose a unique charging policy for people in Supported Living schemes but this would conflict with the principles of Fairer Charging and be open to criticism.'*

There is no indication from the minutes that this was to be taken forward for consideration. No further report to Members on this proposal has been produced to Internal Audit.

5.2.18 Report to Cabinet on 1 December 2005 - Budget Proposals - Charging Policy. Paragraph 5.10 Charging Policy Options. This is the first time that Fairer Charging is being considered by Members as an option as a charge policy for service users residing at 'in house' Supported Living Units. Cabinet minute 361 approved the implementation of Fairer Charging from 1 February 2006, or as soon as possible after that date.

### **5.3. Was there a 'Special Charging Policy' for the financial assessment of service users residing at 'in house' Supported Living Units?**

5.3.1 A number of documents have been provided to Internal Audit by DASS which indicate that Managers had been giving consideration to the production of a charging policy specifically for 'in house' supported living service users prior to the closure of Esher House in late 1997.

5.3.2 Whilst no Committee reports (and only one document seen by Internal Audit) uses the phrase 'Special Charging Policy' and there is no file titled 'Special Charging Policy'; it is clear that between late 1997 and early 2006 the Council applied a policy of charging for the provision of care and support by Social Services staff at Bermuda Road, Curlew Way and Edgehill Road. This charging policy does not appear to have been applied at other 'in house' Supported Living Units across Wirral.

5.3.3. On balance, it is considered to be a reasonable use of language to describe the charging policy implemented at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006 as a 'Special Charging Policy'. However, this charging policy is the same as that referred to as 'Modified CRAG' and in line with the charging policy approved by Social Services Committee in September 1997.

**5.4. Was a Charging Policy in relation to the provision of care and support by Council staff at 'in house' Supported Living Units approved by Members?**

5.4.1 Yes, albeit that for a long time during this investigation the contrary appeared to be the case.

5.4.2 Up until the final week of preparing this report no evidence was discovered by or produced to Internal Audit to suggest that Members had approved a charging policy in relation to the provision of care and support by Council staff at 'in house' Supported Living Units. The discovery of the 3 September 1997 report to Social Services Committee (described in section 5.2 above) changed this position completely.

**5.5. Was the Charging Policy in relation to the provision of care and support by Council staff at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006 lawful? Was it reasonable?**

5.5.1 When the first three 'in house' Supported Living Units, Bermuda Road, Curlew Way and Edgehill Road, were set up (in October to December 1997) the Units were classified as 'small residential homes'. Service users who resided at the 'in house' Supported Living Units were financially assessed based on a version of CRAG modified by the Social Services Department (in line with Members' 3 September 1997 decision at Social Services Committee).

5.5.2 A financial assessment under CRAG would only leave the service user their weekly Department of Social Security Personal Allowance for 'daily living' costs. However, under the charging policy approved by Members on 3 September 1997, service users who moved from Esher House between October and December 1997 to Bermuda Road, Curlew Way or Edgehill Road and who were in receipt of Disability Living Allowance ('Care' component) and/or Severe Disability Premium were charged the amount offered by those benefits to contribute towards the costs of their care packages. Service users were left with a minimum income of £70.10 per week towards their increased 'daily living' costs. This was appropriate as their living costs under Supported Living were higher because of their greater independence.

5.5.3 Therefore, the principle of a charging policy (for the provision of care and support to residents in 'in house' Supported Living Units) allowing more disposable income to meet increased daily living expenses is logically sound. Legally, any such charges must be 'reasonable' and, under the Council's Constitution, such charges must be duly authorised.

- 5.5.4 From an examination of individual service users' financial assessments, for the period 1997 to 2006, the minimum income retained by each service user is set out in the following table.

Year	Minimum Weekly Allowance allowed by the Department of Social Services
1997	£70.10
1998	£71.80
1999	£73.30
2000	£74.45
2001	£75.65
2002	£76.95
2003	£77.95
2004	£79.35
2005	£80.15
2006	£81.95

- 5.5.5. The 3 September 1997 Charging Policy (or 'Modified CRAG' or 'Special Charging Policy', depending upon a person's preferred terminology) was applied to financial assessments of residents at Bermuda Road, Curlew Way and Edgehill Road from late 1997 until the service users were actually assessed in accordance with Fairer Charging with effect from 1 February 2006 onwards.
- 5.5.6 The Council's statutory power to charge for the provision of social care is set out in Section 17 of the Health and Social Services and Social Security Adjudication Act 1983 ('the HASSASSA Act'). This permits Local Authorities to *'recover such charge (if any) as they consider reasonable'*. This, however, is subject to the right of a service user to satisfy the Council that he should not pay more than it is reasonably practicable for him to pay.
- 5.5.7 Section 17 of the HASSASSA Act does not require authorities in determining a reasonable charge to have specific regard either to the cost of service or to the means of the person required to pay. Nevertheless, such considerations among other will, no doubt, normally be taken into account by authorities when determining what level of charge would be reasonable. This section does not require a means test to be applied to every person charged.
- 5.5.8 The answer to the question *'Were the charges levied at the Moreton Supported Living Units between 1997 and 2006 reasonable?'* can be looked at in two separate time periods. The first period runs from 1997 (when Social Service Committee approved a charging policy for Supported Living) until April 2003 when Fairer Charging should have been introduced in all the Supported Living Units across Wirral. The second period runs from April 2003 until February 2006 when Fairer Charging was actually introduced at those units.

5.5.9 Initially, until April 2003 the charges levied were, on balance, probably reasonable and lawful. However, between April 2003 and the introduction (in Wirral) of Fairer Charging in February 2006, the charges were probably unreasonable so far as the charges exceeded what would have been levied under Fairer Charging. To that extent the charges were also unlawful. This judgement is reached having regard to the cumulative impact of:

- the apparent failure to comply with Government Guidance for nearly three years (i.e. the delay in implementing Fairer Charging between April 2003 and February 2006);
- the failure to apply the charges actually levied consistently across the Borough; and
- the significantly adverse financial consequences of the delay in introducing Fairer Charging for the service users at Bermuda Road, Curlew Way and Edgehill Road.

5.5.10 The September 1997 Committee report had appended to it four models showing how the proposed charging policy would affect different categories of service user. These models show that the Council's charges were identical to service users' income derived from the 'care' element of their Disability Living Allowance (if any) and any Severe Disability Premium. On balance, officers consider this to be a reasonable approach and it is clearly linked to income (although not overtly to the level of services provided).

5.5.11 On the other hand, the charging policy was not applied consistently across the Borough (see below). But this does not automatically render other charges (that were assessed) unlawful. In addition, the Whistleblower has given examples of instances where it is alleged the implemented charging policy lead to financial hardship. A further consideration, albeit not one known to Social Services Committee in 1997, is the fact that the application of Fairer Charging lead to appreciable reductions in the weekly charges to the residents at the 'in house' Supported Living Units at Bermuda Road, Curlew Way and Edgehill Road.

5.5.12 Overall, however, officers consider that the policy approved by Members on 3 September 1997 was, on the balance of probabilities, at the time (1997) reasonable and thus lawful.

5.5.13 Whilst the charging policy approved by Members in 1997 may have been reasonable in 1997, the question of reasonableness needs to be reassessed in the light of the 23 November 2001, publication by the Department of Health of '*Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities*'. This Guidance clearly stipulated that Councils should implement Fairer Charging (for all service users in receipt of Home Care and other non-residential Social Services) from 1 April 2003.

5.5.14 As mentioned above, Wirral did not implement Fairer Charging for service users residing at Bermuda Road, Curlew Way and Edgehill Road until 1

February 2006 onwards. This delay is hard to justify in any circumstances, especially given that it had a clearly adverse financial impact on vulnerable service users.

- 5.5.15 There is a compelling argument for concluding that so far as service users at Bermuda Road, Curlew Way and Edgehill Road paid in excess of what they would have paid had the Council implemented Fairer Charging for the residents of those Supported Living Units on 1 April 2003 the charges were unreasonable and hence unlawful.

**5.6. Were charges for care and support at 'in house' Supported Living Units applied consistently across Wirral? Did the Council fail to collect large sums of money?**

- 5.6.1. Following the Report to Cabinet on 1 December 2005, DASS Finance Team undertook a review of service users residing at 'in house' Supported Living Units. Members will note that this predates the lodging of the Whistleblower's Grievance in August 2006.

- 5.6.2. During the review of the 'in house' Supported Living Units by the DASS Finance Team, it was identified that all, except for service users residing at Bermuda Road, Curlew Way and Edgehill Road who were already being financially assessed under 'Modified CRAG' (i.e. the 'Special Charging Policy'), had never been financially assessed prior to 1 February 2006. The other 'in house' Supported Living Units came into operation at various times from mid 1998.

- 5.6.3. Internal Audit identified 63 of the current 'in house' service users (excluding those at Bermuda Road, Curlew Way and Edgehill Road) where there were delays in undertaking financial assessments between 2003 and 2006. Of the 63 service users, five would have been assessed as not being liable to make any contribution to their care costs. However, Internal Audit consider that the other 58 service users should have been assessed as liable to contribute a total of £156,400 over the three year period in question.

- 5.6.4 In other words, if Fairer Charging had been implemented at all 'in house' Supported Living Units across Wirral (excluding those at Bermuda Road, Curlew Way and Edgehill Road) from 1 April 2003, the Council would have received total additional income of £156,400 between April 2003 and February 2006.

- 5.6.5 The £156,400 is calculated on the assumption that the level of benefits received by the service users (and their other financial details) remained the same throughout the period of placement. Unfortunately, current DASS records do not allow reliable calculations to be made in respect of any potential loss of income from former service users who received care and support between 2003 and 2006, but who are no longer resident at the 'in house' Supported Living Units in question.

- 5.6.6. The Department of Health Guidance dated September 2003, Fairer Charging Policies for Home Care and other non-residential Social Services, paragraph 96 states:

*'96. Once a person's care needs have been assessed and a decision has been made about the care to be provided, an assessment of ability to pay charges should be carried out promptly, and written information about any charges assessed as payable, and how they have been calculated, should be communicated promptly. This should normally be done before sending a first bill. **Charges should not be made for any period before an assessment of charges has been communicated to the user, although this may be unavoidable where the user has not co-operated with the assessment.** A first bill for a charge for a lengthy past period can cause needless anxiety. Any increase in charges should also be notified and no increased charge made for a period before the notification'. (Emphasis added.)*

- 5.6.7 To all practical intents, the Council are now legally precluded from seeking to recover any of the £156,400: we cannot undertake assessments retrospectively and so the money is lost.

- 5.6.8 If it was reasonable and lawful for Social Services to charge for care and support at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2003, it would have been equally lawful to apply a consistent approach to charging at other 'in house' Supported Living Units across Wirral during these years. This was not done. Whilst financial records from this period are incomplete, if it is assumed that benefits would have been maximised (and that service users would have been in receipt of Disability Living Allowance ('care' component) and Severe Disability Premium), Internal Audit consider that the Council may have lost out on further potential income in the order of £300,000 for the period prior to April 2003.

- 5.6.9 As with the £156,400 referred to above, the Council are now legally precluded from seeking to recover any of the £300,000 as assessments may not be undertaken retrospectively.

- 5.6.10 On the basis of the evidence available, this failure to assess service users does not appear to have been a result of a conscious policy decision in DASS. Rather, it seems to have been a failure by officers to apply with consistency the decision taken by Members at Social Services Committee in September 1997.

**5.7. Financial assessments for service users who, from 1997, have resided (or are still residing) at Bermuda Road, Curlew Way and Edgehill Road 'in house' Supported Living Units. Should there be reimbursement?**

- 5.7.1. The PIDA Report, at paragraph 40 states:

*'During its review of its charging policy, the Social Services Department informed service users that where charges under Fairer Charging would*

*be lower than the original charges, compensation would be awarded from April 2003. .... Officers have confirmed that service users will be reimbursed where it becomes clear they have contributed more than was due under Fairer Charging’.*

In the minutes of the Audit and Risk Management Committee on 4 November 2008, (minute 37) records the Director of Adult Social Services as stating:

*‘However, where higher incorrect charges had been levied, reimbursement would be made’.*

- 5.7.2. Members are recommended to endorse the principle of reimbursement. However, regard will need to be given to the financial and other consequences of reimbursement for the service users. If reimbursement is made by way of lump sum, this may lead to a disproportionate loss of benefit entitlement and no appreciable financial benefit. It is likely that individual solutions will need to be found in each case of excessive charging and agreement reached, on a case by case basis, with the full involvement of the service users and their family and/or advisers.
- 5.7.3 From the evidence discovered during Internal Audit's work into the existence of a ‘Special Charging Policy’, it is possible to draw a variety of conclusions.
- 5.7.3.1 It can be considered that the charges levied were reasonable and lawful as Members approved the Charging Policy on 3 September 1997 (and the variation to CRAG was a reasonable and fair approach at that time).
- 5.7.3.2 Alternatively, it can be considered that this was appropriate only until Fairer Charging should have been implemented: i.e. from 1997, until 1 April 2003. For the reasons articulated earlier in this report, this is the recommended approach.
- 5.7.4. Internal Audit's work into the existence of a ‘Special Charging Policy’ also included a review of the financial assessments for each service user who, from 1997, resided at Bermuda Road, Curlew Way or Edgehill Road. If Members accept that the appropriate approach to charging at these three ‘in house’ Supported Living Units is to apply Fairer Charging from 1 April 2003 (in accordance with Government Guidance) the total potential liability of the Council to reimburse service users is £116,300. This affects 15 service users (nine of who are current service users) and individual total overpayments ranging from a few hundred pounds to over £15,000.

## **5.8. Consequence for a service user’s current benefit claim.**

5.8.1. If a service user receives a reimbursement, it may change their:

- Entitlement to benefits they are already receiving (or may wish to claim in the future); i.e. capital held by the service user may



increase and exceed the Department of Work and Pensions' capital threshold;

- Entitlement to Housing Benefit and Council Tax Benefit that they are already receiving (or may wish to claim in the future) and
- Their current assessment under Fairer Charging.

## **5.9. Balls Road, Birkenhead.**

5.9.1 On 4 November 2008, the Director of Adult Social Service submitted a Report titled 'Follow Up of Disclosure Under Public Interest Disclosure Act 1998 (PIDA). In section 5.9 of that report, it was stated that:

*'... one anomaly at Balls Road, the only Supported Living accommodation owned by the Council was uncovered in September 2008, as a part of the ongoing review and reassessment of all arrangements. This arrangement dates back some time and relates to 5 people and services collected for Daily Living Costs'*

5.9.2 Minute 37A, paragraph 6 states:

*'The Director reported that he understood it to be around the 'Daily Living Costs' that concerns had been highlighted ... he indicated that one anomaly had been identified in September 2008 and was being investigated in relation to 5 people living at Balls Road, the only Supported Living accommodation owned by the Council. Although investigations were ongoing, he had evidence in relation to four of the five cases, who were paying differential amounts as a result of being in receipt of differential amounts of Housing Benefit. The arrangement dated back some time and pre-dated Fairer Charging. However, a member expressed the view that the concern highlighted was not around 'daily living costs', but about special charging applied at Bermuda Road, Curlew Way and Edgehill Road.'*

5.9.3 The Manager at Balls Road has been interviewed and the following information obtained:

*'Service users who reside at Balls Road require a lower level of support and are able to undertake daily living task such as cleaning, shopping and preparing their own meals. They look after themselves as if in their own home and do not operate a communal 'daily living' fund or as referred to in the Director's Report, 'Daily Living Cost', as the service users are more independent and make their own meal arrangements.'*

5.9.4 During an interview with the Director of Adult Social Services these findings relating to Balls Road were put to him. The Director stated that at the time (November 2008), he had been provided with a large number of pieces of information, one of which made reference to 'Daily Living Costs' relating to service users residing at Balls Road. After the Committee he received an up date which indicated that there was no issue at Balls Road relating to 'Daily Living Costs' and that his statement

in his report to Committee (and comments at the meeting) on 4 November 2008 had been mistaken.

- 5.9.5. It should be noted that there were no concerns relating to Balls Road raised by the Whistleblower either in the Grievance or in the PIDA disclosure to the Audit Commission.

#### **5.10. Whistleblowing and/or Grievance?**

- 5.10.1 As indicated in section 2 of this report, before the Whistleblower brought these issues to the attention of the Audit Commission under PIDA, they were raised within the Council under the Authority's Grievance Procedure.

- 5.10.2 The Whistleblower originally lodged a formal Grievance with the former Director of Adult Social Services in August 2006 (and re-submitted it in September 2006). That Grievance raised a number of issues, including those that have been subject to this investigation by Internal Audit. The Whistleblower has stated to the Director of Law, HR and Asset Management that the submission of the Grievance was a result of managers not addressing matters that had been raised over a protracted period, but in an informal manner. The substantive hearing of the Whistleblower's Grievance Appeal did not commence until July 2007.

- 5.10.3 Over three years have elapsed since the Whistleblower submitted the initial formal Grievance. Only following Internal Audit's investigation has the Council formally recognised that almost all the Whistleblower's concerns in relation to charging practices at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006 and the Council's delay in introducing Fairer Charging at all 'in house' Supported Living Units were legitimate.

- 5.10.4 The Whistleblower's grievance was initially considered by the former Director of Adult Social Services, Kevin Miller ('Mr Miller'). Mr Miller did not uphold the Whistleblower's Grievance and the Whistleblower exercised the right for a rejected Grievance to be referred to Council's Employment Appeals Sub-Committee.

- 5.10.5 The Employment Appeals Sub-Committee met on 23 May 2007. The matter was adjourned until 2 and 3 July 2007. This was partly in view of the complexity of the case and partly to enable Mr Miller to provide answers to certain elements of the Whistleblower's Grievance that Members felt had not been adequately addressed in the former Director's original responses.

- 5.10.6 The Employment Appeals Sub-Committee met again on 2 July 2007. That Hearing was not completed as the Whistleblower (who was in receipt of independent legal advice) elected to withdraw the Grievance Appeal and to sign a Compromise Agreement with the Council to bring to an end the Whistleblower's contract of employment, on the terms set out within that document. The extent to which the Whistleblower's withdrawal of this Grievance Appeal also concluded the Whistleblow was the subject

of subsequent disagreements with the Council and is addressed later in this report. The Compromise Agreement between the Whistleblower and the Council was completed in April 2008 and the Whistleblower ceased employment with the authority.

5.10.7 Section 4 above sets out the extent to which the Whistleblower referred to the alleged 'Special Charging Policy' in the initial Grievance. In addition, in the September 2006 submission to the former Director, Mr Miller, he used the phrase 'qualified disclosure' which is more normally associated (in the sense of 'protected disclosure') with Whistleblowing.

5.10.8 With the benefit of hindsight it seems clear that the Whistleblower was complaining about an alleged service failure (the classic concern of Whistleblowers). However, the Whistleblower also complained about other matters (including an alleged 'excessive workload' and a 'lack of role clarification'). These sorts of issues are more typically associated with Grievances.

5.10.9 After the withdrawal of the Grievance Appeal, the Whistleblower requested a formal response to a letter sent to the Chief Executive on 1 March 2007 (complaining about the delay in the Appeal being heard). In an email, dated 2 October 2007, to the former Head of Human Resources, the Whistleblower wrote:

*'I would be grateful if you could advise on where the information in relation to the above, referring to the subject - Whistleblowing, is up to. .... However I have had no feedback on where your investigation is up to in relation to whistleblowing.'*

5.10.10 In an email dated 3 October 2007 to a senior Manager in Human Resources, the Whistleblower clarified the subject of the whistleblowing. There is the statement:

*'I do not have the letter to hand but I know I invoked the Grievance and Whistleblowing procedure. Indeed I was actually whistleblowing on the grievance process (10 months to get a response etc)'*

5.10.11 In a letter dated 22 October 2007 to the individual from the former Head of Human Resources, there is the statement:

*'When you withdrew your grievance I must say that it was a natural response on the part of the Council to assume also that you were withdrawing any related Whistleblowing complaint..... If, however, the matter you wish to whistleblow in fact differs from the content of your grievance appeal would you please clarify exactly what it is that you wish to whistleblow about.'*

5.10.12 In a letter dated 29 October 2007 replying to the Head of Human Resources, there is the statement:

*'It would appear from your response that no investigation has taken place into any of the issues I have raised ..... Therefore the assumption that I*

*simultaneously withdrew my whistleblowing allegation after withdrawing from the Grievance Appeal Hearing are misguided and I would argue are motivated by the Council's reluctance to deal with the serious concerns I have raised. This stance is reflected in your comments "would you please clarify exactly what it is you wish to whistleblow about". This seems to suggest that you have not read the documentation I have provided or do not consider there is anything that should concern the Council.'*

5.10.13 As indicated in the opening paragraph to this report, it was in October 2007 that the Whistleblower reported these issues to the Audit Commission.

5.10.14 With hindsight, it seems clear that the Whistleblower's concerns about service delivery issues (as opposed to his personal Grievances in relation to matters such as 'role clarification') should have been recognised as a Whistleblow and treated accordingly.

5.10.15 In recognition of this issue, the Council's Grievance Policy was revised in 2009 to include the following guidance:

**'WBC Grievance Policy**

**'Please note:** *A grievance or private complaint is a dispute about the employee's own employment position and has no additional public interest dimension. Whistleblowing is where an employee has a concern about danger or illegality that has a public interest aspect to it: usually because it threatens others (for example, customers or the public).*

*'It is impossible to provide a comprehensive list of all the issues that might give rise to a grievance but the more common types of grievance include terms and conditions of employment (excluding grading), health and safety, relationships at work, new working practices, organisational changes and equal opportunities. Please note that grievances in relation to terms and conditions of employment can only be taken out where employees believe these are less favourable than those received by other employees.*

*'If you are in any doubt about which procedure to use, in the first instance please read each policy and procedure. If you are still unsure then please contact your departmental confidential reporting officer.'*

5.10.16 It is recommended that this guidance is drawn to the attention of all Principal Officers and above.

**5.11 Other issues.**

**5.11.1 Why did it take so long for the existence of the 3 September 1997 report authorising charging at 'in house' Supported Living Units to be produced?**

5.11.2 The 3 September 1997 report was approved by Members when Mr Miller's predecessor was Director of Social Services. Mr Miller did not start work at the Council until December 1997, taking over as Director on 1 May 1998. Wirral Social services was put in 'Special Measures' in 1999 and came out of 'Special Measures' in 2002. The Deputy Director Adult Social Services has stated that:

*'I can confirm that (unsurprisingly) there was considerable senior staff turnover around that period.'*

5.11.3 In the light of this, it is not entirely surprising that neither the current Director of Adult Social Services, nor those of his staff interviewed by Internal Audit, were aware of a report that was written over 12 years ago.

**5.11.4 Were the Whistleblower's allegations in relation to Fairer Charging and Supported Living validated by Internal Audit's findings?**

5.11.5 Irrespective of the label that was (or should have been) applied to the Whistleblower's Grievance, it is now clear that most of the concerns in relation to 'in house' Supported Living and Fairer Charging were correct. As set out above, the Whistleblower raised six such concerns:

- a) A Special Charging Policy was levied at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2006.
- b) The Special Charging Policy was not approved by Members and was thus unlawful.
- c) Those charges were also excessive.
- d) The Council lost large sums of money due to a failure to assess service users at other Supported Living Units across Wirral prior to 2006.
- e) The Council delayed unreasonably in implementing Fairer Charging for service users at Supported Living Units and this had an adverse financial consequence for the service users at Bermuda Road, Curlew Way and Edgehill Road.
- f) The Council should reimburse the service users at Bermuda Road, Curlew Way and Edgehill Road for monies that were 'unlawfully levied over a prolonged period of time'.

Of these six concerns, a) has been validated; b) only very recently proved to be unfounded; c) has been validated in part (for the period April 2003 to February 2006); d) has been validated; e) has been validated and Members are recommended to consider implementing f). Irrespective of the label applied to the Whistleblower's Grievance, his concerns in relation to Supported Living and Fairer Charging were serious and legitimate and should have been promptly resolved.

- 5.11.6 The only point of substance raised by the Whistleblower in relation to Fairer Charging and Supported Living and not validated by Internal Audit is the matter of Members' approval of the principle of the 'Special Charging Policy' at the Social Services Committee on 3 September 1997. However, until earlier this month other current DASS officers appear to have been unaware of that decision.
- 5.11.7 It is reasonable to conclude that officers did not recognise that elements of the Whistleblower's Grievance would more appropriately have been dealt with under the Council's Whistleblowing Policy. In the light of this, all Council managers should be reminded of the clear guidance contained within the authority's Grievance Policy as to the difference between a Grievance (or private complaint) and a Whistleblow (which concerns danger or illegality that has a public interest or service user/customer aspect).
- 5.11.8 All officers involved in this investigation would like to express their appreciation of the Whistleblower for raising these matters and for providing evidence to the investigation. Members may wish to express their appreciation of the Whistleblower's actions as part of their decision.

## **6. CONCLUSIONS**

- 6.1 Between October 1997 and February 2006 a 'Special Charging Policy' also referred to as 'Modified CRAG' was implemented by the Council in relation to the provision of care and support by Social Services/DASS staff at the 'in house' Supported Living Units at Bermuda Road, Curlew Way and Edgehill Road, Moreton.
- 6.2 The charges referred to in 6.1 above were consistent with the principles for charging at 'in house' Supported Living Units approved by the Council's Social Services Committee on 3 September 1997.
- 6.3 The principles for charging at 'in house' Supported Living Units approved by the Council's Social Services Committee on 3 September 1997 were intended to be applied by officers in relation to all 'in house' Supported Living Units in Wirral.
- 6.4 On balance, between October 1997 and April 2003, the charges referred to in paragraph 6.1 above, were reasonable and lawful and should not be subject to any reimbursement.
- 6.5 On balance, between April 2003 and February 2006, in relation to the charges referred to in paragraph 6.1 above, in so far as the sums actually paid by an individual service user exceeded what they might reasonably have been required to pay had the Council implemented Fairer Charging in April 2003, such charges were excessive and should be subject to consideration of reimbursement.

- 6.6 If the suggestion in paragraph 6.5, above, is accepted, the service users at Bermuda Road, Curlew Way and Edgehill Road, Moreton, were subject to excessive charging totalling £116,300.
- 6.7 If, in line with paragraph 6.5 above, reimbursement is to be considered, officers should seek to reach agreement with individual service users (and their family and/or advisers) as to the most appropriate, lawful solution, having due regard to the best interest of the service user in question.
- 6.8 The delay in implementing Fairer Charging at the other 'in house' Supported Living Units across Wirral (apart from those at Bermuda Road, Curlew Way and Edgehill Road) between April 2003 and February 2006 meant the Council failed to attempt to collect £156,400 of income to which it was legally entitled, but cannot now legally seek to recover.
- 6.9 The failure to assess service users at other 'in house' Supported Living Units across Wirral (apart from those at Bermuda Road, Curlew Way and Edgehill Road) prior to April 2003 meant that the Council failed to attempt to collect around £300,000 of income to which it was legally entitled, but cannot now legally seek to recover.
- 6.10 That officers did not recognise that elements of the Whistleblower's Grievance should more appropriately have been dealt with under the Council's Whistleblowing Policy. Irrespective of the label applied to the Whistleblower's Grievance, the concerns in relation to 'in house' Supported Living and Fairer Charging were serious and legitimate and should have been promptly resolved.
- 6.11 In the light of paragraph 6.10 above, all Council managers should be reminded of the clear guidance contained within the Authority's Grievance Policy as to the difference between a Grievance (or private complaint) and a Whistleblow (which concerns danger or illegality that has a public interest or service user/customer aspect).
- 6.12 The only point of substance raised by the Whistleblower in relation to Fairer Charging and Supported Living and not validated by Internal Audit is the matter of Members' approval of the principle of the 'Special Charging Policy' at the Social Services Committee on 3 September 1997. However, until earlier this month other current DASS officers also appear to have been unaware of that decision.
- 6.13 All officers involved in this investigation would like to express their appreciation of the Whistleblower for raising these matters and for providing evidence to the investigation. Members may also wish to express their appreciation of the Whistleblower's actions as part of their decision.

## **7. FINANCIAL AND STAFFING IMPLICATIONS**

- 7.1. Between 2003 and 2006, service users at Bermuda Road, Curlew Way and Edgehill Road, Moreton, were subject to excessive charging totalling £116,300.
- 7.2. Due to the delay in undertaking financial assessments there has been a potential loss of income to the Council of £456,400 (being £300,000 prior to April 2003 and £156,400 post March 2003).
- 7.3. Any reimbursement of excess charge will require formal Member approval. This will require Cabinet approval and, if the funding cannot be met within existing resources, it will also require Council approval. It is recommended that any costs of reimbursement or other action are funded from the Department of Adult Social Service's Revenue Budget.
- 7.4 There are no staffing implications.

**8. LOCAL MEMBER SUPPORT IMPLICATIONS**

- 8.1. There are no local Member support implications.

**9. LOCAL AGENDA 21 STATEMENT**

- 9.1. There are no local agenda 21 implications.

**10. PLANNING IMPLICATIONS**

- 10.1. There are no planning implications.

**11. EQUAL OPPORTUNITIES IMPLICATIONS**

- 11.1. There are no equal opportunities implications.

**12. COMMUNITY SAFETY IMPLICATIONS**

- 12.1. There are no community safety implications.

**13. HUMAN RIGHTS IMPLICATIONS**

- 13.1. In writing this report due regard has been given to the rights of service users and all other persons affected.

**14. BACKGROUND PAPERS**

- 14.1. Appendix 1- Audit Commission – Adult Social Services Follow Up of PIDA Disclosure.  
Appendix 2 - Report to Social Services Committee on 3 September 1997 entitled 'Report on Future Services for People with Learning Disabilities', together with copy Minute.  
Appendix 3 Notes of a Social Services Managers' meeting, on 3 October 1997, titled 'Charging Policy re: Independent Living Schemes'.



Appendix 4 Local Authority Circular, 'Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities', LAC (2001)32.

Appendix 5 - Definitions.

Appendix 6 - People interviewed during the PIDA audit.

Appendix 7 - Timeline.

Appendix 8 - Area Group 'in house' Supported Living Units.

## **15. RECOMMENDATIONS**

- 15.1. Members consider the content of this report, accept the findings set out in section 5 and endorse the conclusions set out in section 6.
- 15.2. Members consider requesting the Director of Adult Social Services to seek any necessary Cabinet and/or Council approval to:
  - (a) Implement the principle of reimbursement of service users at Bermuda Road, Curlew Way and Edgehill Road Moreton, between April 2003 and February 2006 in so far as the sums actually paid by an individual service user exceeded what they might reasonably have been required to pay had the Council implemented Fairer Charging in April 2003 by making any appropriate reimbursements and/or
  - (b) Take any other appropriate restorative action.
- 15.3 The Director of Adult Social Services report back to this Committee on 18 January 2010 to update Members on his progress in implementing the preceding paragraph.
- 15.4 By 31 October 2009, the Director of Law, HR and Asset Management write to all Council Principal Officers to remind them of the clear guidance contained within the Authority's Grievance Policy as to the difference between a Grievance (or private complaint) and a Whistleblow (which concerns danger or illegality that has a public interest or service user/customer aspect).
- 15.5 Members consider expressing their appreciation to the Whistleblower for bringing these matters to the attention of the Council.

**DAVID A. GARRY**  
CHIEF INTERNAL AUDITOR

This page is intentionally left blank

**WIRRAL COUNCIL**

**AUDIT AND RISK MANAGEMENT COMMITTEE**

**23 SEPTEMBER 2009**

**REPORT OF THE CHIEF INTERNAL AUDITOR**

**ADULT SOCIAL SERVICES - CHARGING POLICY - SERVICE USERS  
RESIDING AT 'IN HOUSE' SUPPORTED LIVING UNITS**

Appendix 1	Audit Commission – Adult Social Services Follow Up of PIDA Disclosure.
Appendix 2	Report to Social Services Committee on 3 September 1997 entitled 'Report on Future Services for People with Learning Disabilities', together with copy Minute.
Appendix 3	Notes of a Social Services Managers' meeting, on 3 October 1997, titled 'Charging Policy re: Independent Living Schemes'.
Appendix 4	Local Authority Circular, 'Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities', LAC (2001)32.
Appendix 5	Definitions.
Appendix 6	People interviewed during the PIDA audit.
Appendix 7	Timeline.
Appendix 8	Area Group 'in house' Supported Living Units.

This page is intentionally left blank

# **Adult Social Services - Follow up of PIDA Disclosure**

**Wirral Metropolitan Borough Council**

**Audit 2007/08**

External audit is an essential element in the process of accountability for public money and makes an important contribution to the stewardship of public resources and the corporate governance of public services.

Audit in the public sector is underpinned by three fundamental principles.

- Auditors are appointed independently from the bodies being audited.
- The scope of auditors' work is extended to cover not only the audit of financial statements but also value for money and the conduct of public business.
- Auditors may report aspects of their work widely to the public and other key stakeholders.

The duties and powers of auditors appointed by the Audit Commission are set out in the Audit Commission Act 1998, and the Local Government Act 1999 and the Commission's statutory Code of Audit Practice. Under the Code of Audit Practice, appointed auditors are also required to comply with the current professional standards issued by the independent Auditing Practices Board.

Appointed auditors act quite separately from the Commission and in meeting their statutory responsibilities are required to exercise their professional judgement independently of both the Commission and the audited body.

### **Status of our reports**

The Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission explains the respective responsibilities of auditors and of the audited body. Reports prepared by appointed auditors are addressed to non-executive directors/members or officers. They are prepared for the sole use of the audited body. Auditors accept no responsibility to:

- any director/member or officer in their individual capacity; or
- any third party.

### **Copies of this report**

If you require further copies of this report, or a copy in large print, in Braille, on tape, or in a language other than English, please call 0844 798 7070.

.

© Audit Commission 2006

For further information on the work of the Commission please contact:

Audit Commission, 1st Floor, Millbank Tower, Millbank, London SW1P 4HQ

Tel: 020 7828 1212 Fax: 020 7976 6187 Textphone (minicom): 020 7630 0421

[www.audit-commission.gov.uk](http://www.audit-commission.gov.uk)

## Contents

Introduction	4
Background	4
Audit approach	4
Main conclusions	5
Recommendations	6
<b>Detailed Findings</b>	<b>8</b>
Contract commissioning	8
Contract monitoring	9
<b>Appendix 1 – Action Plan</b>	<b>14</b>

## Introduction

- 1 A number of concerns were brought to our attention in October 2007 under the Public Interest Disclosure Act 1998 (PIDA). The concerns were in respect of aspects of the Council's provision of services within Adult Social Services and Supporting People. We explained to the person raising these issues that a number of the issues fell outside our remit as external auditors. In these instances advice was given to raise the matters with other appropriate agencies. There were two areas which we considered were relevant to our responsibilities. These involved the Council's procedures in respect of:
  - arrangements for the commissioning and monitoring of contracts for Supported Living and Supported People services, to ensure the Council is receiving value for money; and
  - application of the Department of Health's Fairer Charging policy.

## Background

- 2 The Council provides non residential care services to older and vulnerable people under statute for Supported Living and Domiciliary care. These services are managed by the Council's Department for Adult Social Services. The Council's contract arrangements for Supporting People are the responsibility of the Regeneration Department.
- 3 Concerns were raised with us that certain groups of service users have not been charged in accordance with the Fairer Charging Guidance issued by the Department of Health in 1997. Starting in 2003, the Council set up a Working Group to review its charging policy against the Department of Health's guidance. The review involved a survey of 300 service users to assess their response to proposed changes. In August 2005, the Group concluded that the existing policy did meet the criteria of the Fairer Charging guidance but was complicated and difficult to explain to service users. The Group made recommendations to change the charging policy which would simplify the methodology and raise additional income for the Council. The recommendations were implemented during 2007.
- 4 The Council undertook an accreditation of service providers for Supported Living in 2005. This involved issuing an advertisement inviting providers to apply. A desk top evaluation process was then followed by interviews.

## Audit approach

- 5 Our work initially focussed on interviews with the Heads of Service within Adult Social Services for Finance & Performance and Commissioning, Health & Well-Being. These meetings identified other officers who could provide more detailed information and further meetings were held with officers from the Contract Management Unit, Supporting People and the Adult Protection Unit. The fieldwork was mostly completed in January - March 2008.



- 6 The objectives of the review were to:
- carry out an overview of the Council's arrangements for commissioning and monitoring contracts to ensure appropriate arrangements are in place for the Council to secure VFM; and
  - perform a brief review of the Council's arrangements for charging service users to ensure adequate safeguards and controls are in place to comply with Fairer Charging guidance and protect service users from the threat of financial abuse.

## **Main conclusions**

### **Commissioning and monitoring of contracts**

- 7 The contract arrangements for Supporting People and Domiciliary Care meet good practice in many respects. However, the contract arrangements for Supporting Living need to be progressed further if they are to ensure the Council is getting good VFM. In particular the following areas need to be addressed:
- The contract monitoring arrangements for Supporting Living need to be formalised and embedded, as is the case with Supporting People and Domiciliary Care.
  - The Department needs to complete the contract process in respect of Supporting Living as currently only 12 contracts have been signed and returned in respect of 30 accredited providers.
  - It is unclear how service providers not on the current list of accredited providers are aware that they can apply to go on the list and be evaluated.
- 8 The contracts for Domiciliary Care services are open ended. They do not specify a termination date. The Council have not yet formally determined if these services are to be advertised again allowing new providers to bid at lower costs. To provide ongoing VFM, the Council needs to ensure the service is subject to tendering on an agreed periodic basis.

### **Application of the fairer charging policy**

- 9 The Council was slow in fully applying the Fairer charging guidance which was issued in September 2003. The Council's Fairer charging policy was not applied in full until 2007.
- 10 One of the allegations raised under PIDA was that there was a 'Special Charging policy' applied by the Social Services Department, dating back to 1999, that covered Supported Living service users with Learning Disabilities. The allegation made was that the policy had not been approved by Committee and was 'excessive and unlawful'. Our review has confirmed that a charging policy was applied at some Supported Living establishments. It is not clear from discussions with officers the extent to which the charging policy was in place or whether it was approved by Members.

- 11 During its review of its charging policy, the Social Services Department informed service users that where charges under Fairer Charging would be lower than the original charges, compensation would be awarded from April 2003. No such compensation has yet been given. When Fairer Charging was introduced, officers and Members agreed a prioritised programme for the review of different service groups, with Learning Disabilities later in the review programme. A Learning Disabilities review team is to be formed in August 2008. Based on individual financial assessments, the team will review for each service user the level of charges to be made under fairer charging and the level of financial contributions to be made by service users. Officers have confirmed that service users will be reimbursed where it becomes clear they have contributed more than was due under Fairer Charging. This review is planned to be completed by March 2009.
- 12 The Council now has in place a number of procedures which reduce the risk of potential financial abuse of service users not being identified and suitably addressed. For example, the Adult Protection Unit investigate any complaints and allegations of financial abuse received from service users or their representatives.
- 13 However, there remains a substantial risk that users receiving services from one of the Council's Supported Living providers are being charged unfairly. The provider concerned have not arranged for the completion of financial assessment forms for service users and as a result the Council is not in a position to know whether the aggregate of charges levied on service users by the Council and contributions required by the provider are in compliance with the guidance of Fairer Charging. It is not clear who is currently ensuring that these service users are receiving adequate protection from the risk of financial abuse.
- 14 This situation has existed for several years. The Council needs to ensure, as a matter of urgency, that appropriate safeguards are in place to protect service users from the risk of any potential financial abuse. This could include the Council assuming responsibility for the completion of financial assessments for specific service users.

## Recommendations

- 15 The report has highlighted some areas where arrangements can be strengthened. Our recommendations to address these issues are:

<b>Recommendations</b>
<i>R1 Complete the outstanding matters in respect of the Supported Living contracting process, including the completion of contracts by current providers.</i>
<i>R2 Clarify plans for the subsequent re-tendering of the Domiciliary Care Contract.</i>
<i>R3 Formalise and embed contract monitoring arrangements for Supported Living contracts.</i>

*R4 Complete outstanding financial assessment reviews for service users with Learning Disabilities, ensuring required financial compensation is provided.*

*R5 Ensure appropriate safeguards are applied to protect vulnerable service users from the risk of any potential financial abuse.*

## Detailed Findings

### Contract commissioning

#### Supported Living

- 16 The Council have followed good practice in the procurement process for Supported Living providers in a number of areas. Advertisements in the local paper and the Community Care Journal invited providers to apply. Letters were also sent to current providers. All providers were then subject to a desk top evaluation with providers expected to be registered with CSCI or Supporting People.
- 17 When it is necessary to place new service users with a provider, the Care manager will recommend how needs are to be best met by considering service users preference, cost and service providers capacity. A selection committee will consider the recommendation and decide on the provider to be used from the accreditation list. We understand that service providers can apply to go on the accreditation list on an ongoing basis. However, it is unclear how the Council have communicated this to potential providers.
- 18 There are a number of areas where there is scope for improvement:
  - There is one current provider caring for one service user who is located outside the borough who has not been accredited. We understand that an application is in the process of being compiled.
  - Although 30 accredited providers are used by the Council, only 12 contracts have been signed and returned by providers.

#### Supported People

- 19 The arrangements for the commissioning of Supporting People contracts comply with the Department for Communities and Local Government (CLG) guidance and achieve good procurement practice in many respects. All current providers were required to be evaluated against an accreditation process specified by CLG framework over the period 2003 -2007. A desktop evaluation followed receipt of completed questionnaires. Only one of the current 74 providers has not been accredited. The Council is trying to support this provider to meet accreditation criteria. It is unclear whether the Council should have informed the CLG about this provider.
- 20 Three specialist services went to a full tendering process. Central Procurement were involved in the process. These services were advertised in the European Journal and the local press. All current contracts have been signed.

## **Domiciliary Care**

- 21 The commissioning for Domiciliary Care has followed good procurement practice in most respects. A full tendering exercise was completed in 2005. Invitations to tender for the work were done by advertising in the local press and Community Care journal. A desk top evaluation was carried on tender packs. Stage two of the evaluation process involved interviews and presentations by the providers. The contracts were divided into five areas with services for primary, secondary and tertiary within each area. Three specialist services were tendered on a Wirral area basis. There were eight main providers and three specialist providers.
- 22 All contracts have been signed by the providers.
- 23 The contracts have been compiled on the assumption that they are for a five year period. However, the contracts do not specify the length of contract. Officers commented that the flexibility offered by the contracts has been of benefit to the Council and that value for money has been achieved through the development of mature and long term business relationships. Whilst this may have been the case, the Council will need to put the work out to tender on an agreed periodic basis if it is to be able to evidence that it is continuing to achieve the best value for money.

## **Contract monitoring**

### **Supported Living**

- 24 No formal arrangements have been established for the contract monitoring of Supported Living providers. Invoices from Supporting Living providers are checked to Care Plans by Adult Social Services Budgetary Control. However, reliance is placed on Care managers to report issues to Contract management or Budgetary Control if the provider has not complied with the care plan or there are any problems with the delivery of care plans. There are no arrangements at present for feedback from service users where there is dissatisfaction with services or where quality standards have not been met. We understand that draft proposals for contract monitoring are currently being progressed which may include the appointment of a supporting Living Development Officer who has terms of reference to feedback on the quality of service provided.

### **Supported People**

- 25 The contract monitoring arrangements for Supporting People appear comprehensive and follow CLG guidance where appropriate. The checks applied to all charges raised by service providers are adequate.

- 26 Monitoring of the performance of the Supporting People contracts is done by reporting of two key performance indicators to the CLG on a quarterly basis. For the block contracts providing for services for those service users who are expected to improve over a two year period, the PI reports the number of people who have been moved on in a planned way. Where service users are not expected to improve, officers monitor a PI measuring the numbers of service users maintained by the service. Two officers visit service users and issue a standard report to the Commissioning manager.
- 27 A value for money review is being undertaken by the officer representing Probation on the Care Strategy Group. This involves:
- assessing number of hours for each type of service;
  - review of on costs; and
  - level of reported surplus.
- 28 The VFM exercise which started 12 months ago has now evaluated all Supported People block contracts. The results of this review found that of the sixteen providers only one did not identify good VFM. A reduction in the contract was negotiated for this provider. At the time of our review, the VFM reviews for Learning Disabilities and Older People were in progress, with the Mental Health review yet to commence.
- 29 The block contract services are issued with a payment schedule at the start of each financial year instructing providers of monthly payments to be made.
- 30 Interface files are submitted monthly by subsidy contract providers which report any changes to the contracts. These changes are checked by Supporting People Payments and Admin team to Housing Benefit records. Payment and Admin staff check all high cost service users and a 10 per cent check of all other lower unit cost services.

### **Domiciliary Care**

- 31 The arrangements for contract monitoring are adequate. Contracts with service providers are monitored by visits to each Agency every 12 months by the Contracts officer. Service user questionnaires are completed either prior or during visits and cover approximately 10 per cent of all service users. The Council plans to implement an e monitoring system whereby carers attendance hours is booked onto the Council's SWIFT system via phones held by the service users.
- 32 Monthly invoices are generated initially from the Council's SWIFT system from service users care plans. Variations to the plan are annotated by the provider. Invoices are checked by the brokerage unit to SWIFT data and passed to management accounts for payment.

## Fairer Charging

- 33 Charges for residential care are set by the national policy, Charging for Residential Care Guidelines (CRAG). The Department of Health issued Fairer Charging Guidance for non-residential care in September 2003. The guidance specifies that charges are discretionary but that when charges are made they must comply with the guidance. The general principle for charging should be that charges reflect people's ability to pay. Other key principles are:
  - people's ability to pay should reflect their personal, disability related expenses;
  - people whose only source of income is Income Support or Pension Credit should not be asked to pay charges; and
  - people with high income or substantial savings should be asked to pay the full cost of their care.
- 34 The principles of Fairer Charging will not be met if service users are charged by both the Council and the service provider.
- 35 A working group was set up to review the current charging policy line in the light of the Fairer Charging guidance as part of the budget options for 2006-07. The Group concluded that the existing policy was fully compliant with the guidance but was complicated to calculate and explain to service users.
- 36 The Fairer Charging policy currently applied by the Council is achieved by applying the following principles:
  - Financial assessment forms are completed by the service user or visits are made to their homes.
  - People who have disposable income which is above 25 per cent of the lower level of Income Support are asked to pay 60 per cent of their disposable income toward their care.
  - Savings of £13,250 are disregarded. Savings between £13,250 and £25,000 are taken account of including £1 for every £250 above the lower limit as income. People with more than £25,000 will be charged the maximum for the service they receive.
- 37 The principles of this guidance were considered by the Council's Fairer Charging Working Group who met in August 2005 to recommend changes to the charging policy. The policy was not implemented until 2007. The Council have since agreed to review charging annually.
- 38 There are a number of safeguards which reduce the risk of service users being charged unfairly:
  - Financial assessments are carried out for all Supported Living, Domiciliary Care and Supported People service users. An exercise by the Financial Assessment officer early in 2007 checked that financial assessments have been completed for all service users, with the exception of those service users cared for by Salisbury Independent Living where completed forms have not been returned.



- The accreditation process for supported living providers involved interviewing providers to find out whether providers charged service users.
- The Council employed a supported Living Development Officer and assistant who maintained contact with service users and could identify cases where unfair charges were applied. However, this post has been vacant since May 2007.
- The Adult Protection Unit provides all service users, their family or advocates with the opportunity to complain in cases of alleged financial abuse. The service provides an independent investigation with findings of all investigations reported to DASS management team.

**39** One of the allegations raised under PIDA was that there was a 'Special Charging' policy applied by the Social Services Department, dating back to 1999, that covered Supported Living service users with Learning Disabilities. The allegation made was that the policy had not been approved by Committee and was 'excessive and unlawful'. We understand from discussions with officers that a charging policy was applied at some Supported Living establishments. It is not clear from discussions the extent to which the charging policy was in place or whether it was approved by Members. We understand that the charging policy was due to discrepancies between different housing units and how service users were charged. We have been advised by Council officers that these charges are no longer applied and that the Fairer Charging policy was fully applied in the summer of 2006.

**40** During its review of its charging policy, the Social Services Department informed service users that where charges under Fairer Charging would be lower than the original charges, compensation would be awarded from April 2003. No such compensation has yet been given. When Fairer Charging was introduced, officers and Members agreed a prioritised programme for the review of different service groups, with Learning Disabilities later in the review programme. A Learning Disabilities review team is to be formed in August 2008. Based on individual financial assessments, the team will review for each service user the level of charges to be made under fairer charging and the level of financial contributions to be made by service users. Officers have confirmed that service users will be reimbursed where it becomes clear they have contributed more than was due under Fairer Charging. This review is planned to be completed by March 2009.



- 41 There remains a substantial risk that users receiving services from one of the Council's service providers are being charged unfairly. The provider concerned has not arranged for the completion of financial assessment forms for service users, as requested by the Council. Forms have been issued to service users and officers have contacted the provider's local manager. However, despite follow up, no completed forms have been returned. Quarterly statements have recently been sent out charging service users the full cost of services. The Council does not always know the actual contributions that the provider requires service users to contribute for services they provide. Consequently, the Council is not in a position to know whether the aggregate of charges levied on service users by the Council and contributions required by the provider are in compliance with the guidance of Fairer Charging. It is not clear who is currently ensuring that these service users are receiving adequate protection from the risk of financial abuse.
- 42 This situation has existed for several years. The PIDA submission referred to concerns in relation to the organisation being raised as early as 2001. The Council needs to ensure, as a matter of urgency, that appropriate safeguards are in place to protect service users from the risk of any potential financial abuse. This could include the Council assuming responsibility for the completion of financial assessments for specific service users.

## Appendix 1 – Action Plan

Page no.	Recommendation	Priority 1 = Low 2 = Med 3 = High	Responsibility	Agreed	Comments	Date
	R1 Complete the outstanding matters in respect of the Supported Living contracting process, including the completion of contracts by current providers.	2	Gerry Flanagan Commissioning Manager	Yes	ALD Review Team established August 2008 to review all SL arrangements. Seconded experienced Contracts Manager into Team to undertake this work.	March 2009
	R2 Clarify plans for the subsequent re-tendering of the Domiciliary Care Contract.	2	Gerry Flanagan Commissioning Manager	Yes	Review VFM appraisal of existing contracting arrangements. Report to SLT/Scrutiny Committee.	January 2009
	R3 Formalise and embed contract monitoring arrangements for Supported Living contracts.	2	Gerry Flanagan Commissioning Manager	Yes	Expressed in Contracts Unit Team Plan and specified in refreshed SL Contracts.	January 2009
	R4 Complete outstanding financial assessment reviews for service users with Learning Disabilities, ensuring required financial compensation is provided.	3	Diane Davidson Service Manager Personal Finance	Yes	To be completed alongside review of services referred to in (R1).	March 2009
	R5 Ensure appropriate safeguards are applied to protect vulnerable service users from the risk of any potential financial abuse.	3	Diane Davidson Service Manager Personal Finance	Yes	Audit of personal finances, involving appropriate advocacy services.	March 2009

METROPOLITAN BOROUGH OF WIRRAL

SOCIAL SERVICES COMMITTEE 3 SEPTEMBER 1997

No 4

---

**REPORT ON FUTURE SERVICES FOR PEOPLE WITH LEARNING  
DISABILITIES****Addendum on the Community Living Strategy**

As described in the main body of the Report, this strategy is about to launch into its first partnership with Housing Associations to develop small housing units in which people, with learning disabilities, will be tenants and will be helped to develop their potential to run their own lives. Most of those moving into such units in the first instance will come from Homes owned and run by the Authority or from Homes, run by the independent sector, where the local authority purchases places. However there are financial implications of this policy which need to be considered.

Residents in the Authority's hostels get paid Income Support of £62.45 of which £48.35 is paid to the Authority as a contribution to the care provided and £14.10 is retained by the resident as a personal allowance. In independent living settings residents will receive Housing Benefit which will be paid to the landlords of the accommodation as rent. This benefit will cover all the costs of the accommodation including repairs, maintenance and general landlord services. However Housing Benefit will not cover any daily living or care costs and the basic income support the resident will receive will be needed to help them pay for food and other living necessities. There will be no contribution from that money for care needs which previously has been partially funded from the Income Support paid by residents.

**Care Needs**

Residents in the more independent settings will still need care, probably 24 hours a day, although it is expected that the staffing provided will focus on training and the development of living skills as well as care, allowing residents to develop increasing independence. The Council will initially lose money on developing this kind of accommodation unless it can find a means of gaining contributions towards the costs of care, whether this is provided, as in these homes, by Council staff or, as in other settings, by voluntary organisation staff and purchased by the Council.

It is however possible for people who are tenants in their own right to be assessed for the Disabled Living Allowance, and the Severe Disability Premium by the Department of Social Security and to be awarded these according to level of their disability and of their need for support in their own home. In order to meet the criteria for these benefits the tenant must be responsible for paying living costs in his/her personal accommodation.

---

It is proposed that in future all independent living schemes are organised in such a way that they -:

- 1) provide tenancies on a rented basis to residents where housing benefit is claimed to a level to cover all the maintenance responsibilities and the furnishings and fittings of any communal areas.
- 2) ensure that every tenant is assessed by the DSS for benefit levels according to their needs for support and that each tenant then is charged at the rate of dependency assessed for the care package he or she needs.

This would mean that every tenant would receive a minimum income of £70.10 which would include the Severe Disablement Allowance and Disability Premium. Most would also receive the Disabled Living Allowance Mobility component of either £13.15 or £33.10. Mobility benefit would be left with the tenant so that they could choose their means of getting about.

Someone with slightly greater needs could also receive the lower rate DLA Care Component of £13.15 which could be contributed towards the care support received from Social Services. Someone with higher dependency again could receive the middle rate of the Disabled Living Allowance Care component of £33.10 and the Severe Disability Premium of £37.15 allowing for a contribution to care costs of £70.25.

Those needing the highest level of care could receive the Higher Rate Disabled Living Allowance Care component of £49.50 and the Severe Disability Premium of £37.15 thus allowing a contribution to care costs of £86.65 (Examples are attached of each level of potential charging).

### **Conclusion**

If residents could be asked to contribute their benefits related to their dependency and level of need for care to the costs of care provision, this would leave each person with an income for daily living needs and with all their housing needs provided for while Social Services would provide or purchase a full package of support care for them according to their individual needs.

### **Recommendation**

Members are asked to agree that in independent living situations, tenants in receipt of the Disabled Living Allowance Care Component and / or the Severe Disability Premium, can be charged the amount offered by those benefits to contribute to the cost of their care packages.

### Example

#### Person A

Aged between 25 and 65 years

(i)	Income Support (including Severe Disablement Allowance and Disability Premium)	=	£70.10
-----	--	---	--------

+

(ii)	DLA (Mobility)	=	£13.15
------	----------------	---	--------

or

£34.50

(NB Mobility benefit is always disregarded)

Income retained by individual (i) and (ii)	£83.25
--	--------

or

£104.65

Contribution to Care Costs	NIL
----------------------------	-----

### Example

#### Person B

(i)	Income (Income Support including SDA and Disability Premium)	=	£70.10
(ii)	DLA (mobility)	=	£13.15
(iii)	DLA (care)	=	£13.15
	Contribution to Care Costs (iii)	=	£13.15

### Example

#### Person C

(i)	Income (Income Support including SDA Allowance and Disability Premium)	=	£70.10
(ii)	DLA (mobility)	=	£13.15
(iii)	DLA (care)	=	£33.10
+			
(iv)	Severe Disability Premium	=	£37.15
	Contribution to Care Costs (iii) and (iv)	=	£70.25

### Example

#### Person D

(i)	Income (Income Support including SDA and Disability Premium)	=	£70.10
(ii)	DLA (mobility)	=	£13.15
(iii)	DLA (care) Higher rate	=	£49.50
+			
(iv)	Severe Disability Premium	=	£37.15
Contribution to Care Costs (iii) + (iv)		=	£86.65

JM/PM/25/03/57/recept/jennycharmech.doc



259

SOCIAL SERVICES COMMITTEE - 3 SEPTEMBER, 1997

these issues be addressed in conjunction with the Panel and proposals be reported to this Committee at a later date.

The Director further reported that the amended regulations strengthened the Panel's focus on adoption. The Council had also used this Panel to recommend the approval of foster carers. The appropriateness of continuing this arrangement was now brought into question, because some of the issues dealing with the approval of foster carers as a resource for the department were different from those dealing with adoption. It was therefore proposed that the Adoption Panel constituted under the regulations should no longer recommend the approval of foster carers, but a similar group be set up to do so. This Panel would have a similar mix of representation, but the independent and social worker representatives would be chosen because of the contribution they could make in the field of fostering rather than adoption. Instead of the present Adoption and Fostering Panel meeting fortnightly, the Adoption Panel and the Fostering Panel would each meet 4 weekly.

**(A) RECOMMENDED - That subject to the approval of the Policy and Resources Committee**

- (i) the consideration of fostering issues be removed from the Adoption Panel and be allocated to a separate Working Party known as the Fostering Panel to meet in alternate fortnights;
- (ii) the Director of Social Services be given delegated powers to (a) Appoint the Agency Social Work members on the Panel; (b) Appoint the independent representation on the Panel; and (c) Accept the recommendations of the Panel on behalf of the Council.

**(B) Resolved -**

- (1) That Councillor M J Green be appointed to serve on both the Adoption and Fostering Panels for a period of one year, Councillor J G Stedmon be appointed to serve on both Panels for a period of two years and Councillor M Groves be appointed to serve on both Panels for a period of three years.
- (2) That checks on prospective members of both Panels be carried out with the Police, NSPCC and departmental records or other local authority records.
- (3) That other issues arising from the amended regulations be addressed in conjunction with the Adoption Panel, and proposals reported to this Committee at a later date.

31. **FUTURE SERVICES FOR PEOPLE WITH LEARNING DISABILITIES**

Further to minute 139 (5/3/97) and minute 26 (1/7/97), the Director of Social Services reported on the anticipated growth in the number of adults with Severe

# SOCIAL SERVICES COMMITTEE - 3 SEPTEMBER, 1997

Learning Disabilities, needing both residential and day-time occupational services, the current types of service provided and possible future directions.

There were in Wirral 1000+ adults (over the age of 19) and 685 children identified as having severe learning difficulties. Of the 1000 adults, 400 were known to live with family carers, mostly parents and some other relatives, 164 lived in hostels or group homes provided by Social Services, 108 had places in independent sector homes/hostels in Wirral and 35 were living in placements out of the borough. Of the remaining approximately 300, some lived in their own accommodation while others did not access any social services as yet, so that their living arrangements were not known. The Social Services budget for all purchasing and provision of accommodation for Adults with Severe Learning Disabilities was £4.754 million. This budget was substantially overspent in 1996/97 with numbers of places having to be purchased in homes outside the borough as Social Services homes were fully occupied. It was impossible to forecast with real accuracy the accommodation needs year by year, but given the age profile of family carers and the special needs factors, it seemed reasonable to assume that at least 100 new beds were likely to be needed over the next 3-5 years and of those, 25 would be required for people with special care needs. Continuing work was needed with the Health Authority to develop a more accurate forecast of exactly what type of accommodation was going to be needed.

With regard to day care, Social Services in Wirral provided a total of 620 places in Day Centres, offering a service to some 700 plus people. Of those places, 113 were for people with special care needs and 20 were for older service users. In addition, the Department purchased a small number of places from the independent sector. The total Social Services budget for Day Care, both purchasing and provision, was £3.17 million. The Director reported that some people, particularly those with special needs, will always need day centre places, but the Department will have to develop alternative activities outside day centres to cope with the difficulties in planning for what was a steadily increasing, though small, number of vulnerable people, requiring some service at different levels for different individuals. Staff at day centres have already started organising such activities and the review of services will continue to look at options for this.

The Director further reported that the Committee had already agreed proposals on the Community Living Strategy in which it had been proposed that people move from hostel settings into tenancies, offered by Housing Associations, in smaller settings. Most of those moving into such units in the first instance would come from Homes owned and run by the Authority or from Homes run by the independent sector, where the local authority purchases places. There were financial implications attached to this policy and the Director proposed that in future, all independent living schemes were organised in such a way that they: (i) provide tenancies on a rented basis to residents where housing benefit was claimed to a level to cover all the maintenance responsibilities and the furnishings and fittings of any communal areas; and (ii) ensure that every tenant was assessed by the DSS for

261

SOCIAL SERVICES COMMITTEE - 3 SEPTEMBER, 1997

benefit levels according to their need for support and that each tenant was then charged at the rate of dependency assessed for the care package he or she needs.

**Resolved -**

- (1) That the Committee notes the report and agrees that officers pursue the directions described to develop services.
- (2) That the Director reports back to a future meeting of this Committee on the results of consultations with users.
- (3) That the Committee agrees that in independent living situations, tenants in receipt of the Disabled Living Allowance Care Component and/or the Severe Disability Premium, be charged the amount offered by those benefits to contribute to the cost of their care packages.

32. **COMMUNITY CARE (DIRECT PAYMENTS) ACT UPDATE**

Further to minute 131 (5/3/97), the Director of Social Services reported that the Direct Payments Act came into effect in April, 1997. However, the final version of Practice and Policy Guidance on the implementation of the Act was received in May, 1997, while draft Guidelines on Accounting and Financial Management of the Act from the Chartered Institute of Public Finance and Accountancy were received in June for consultation. Wirral had responded to the consultation, requesting clarification on a number of issues. Direct payments had the potential to have a significant impact on the Social Services Department budget and the way it provides services, particularly if the plan of the previous Government to consider extending direct payments to people over 65 in 1998 was followed.


In light of the expectation that a full direct payments system would be implemented by September 1997, funding for Living Options Independent Living Project which offers advice on accessing the Independent Living Fund and runs a pilot direct payments scheme was allocated for the six months between April and September 1997. Since this was not likely to be in place before April 1998, Living Options would require the second half of their annual funding - £15,251 in order to be able to continue the project. This amount had remained unallocated in the voluntary sector budget.

**Resolved -**

- (1) That the report be noted.
- (2) That funding for the Living Options Independent Living Scheme be allocated to cover 1 October 1997 to 31 March 1998 for the sum of £15,251.

This page is intentionally left blank



 <b>Metropolitan Borough of Wirral</b> <b>Social Services Department</b>	<b>Notes on Meeting</b>	Meeting Date: 3rd Oct 1997
	<b>Charging Policy re: Independent Living Schemes</b>	Location: 63 Hamilton Sq
<p>Present: [REDACTED] PO, Support Services [REDACTED] Res. Mgr, Learning Disabilities [REDACTED] OIC, Esher House [REDACTED] Contract Manager</p>		
<p>1 Agreed that charging policy for care services will be based upon normal Part 3 assessment system excepting that: Personal allowance will be equal to Income Support Personal Allowance plus Income Support Disability Premium (currently equal to £70.10 for a person aged over 25)</p> <p>2. Since the majority of Service Users will not have any other income or capital assets, a version of the Domiciliary Services Assessment form will be used. [REDACTED] will amend this form to ensure that it requires sufficient information to identify the few cases where capital or other income exists. In these cases an E1 will need to be used for a detailed assessment</p> <p>3. Transport charges - where a care service includes the provision of transport services, particularly where this is associated with day care services, Service Users will be charged in accordance with the Transport Charging Policy. [REDACTED] considered that, as a standard, the charge would be equivalent to the "Band 1" tariff which is presently £6 per week. [REDACTED] will confirm this approach with [REDACTED]</p> <p>4. [REDACTED] to arrange meeting with [REDACTED] to discuss contractual arrangements as it is understood that the declarations made by Service Users within the assessment process is not deemed sufficient to authorise application of charges.</p> <p>5. [REDACTED] to incorporate principles agreed above into contractual arrangements for ILS residents in receipt of care from private sector - McIntyre, MENCAP, Alternative Futures etc</p> <p>6. Implementation of the charging policy is expected to be progressive, as contractual arrangements for the various schemes and providers are formalised.</p>		



**Service User Group**

This policy applies to:-

People who are Wirral residents, as defined within the criteria for Ordinary Residence issued as Department of Health Local Authority Circular LAC(93)7, and any subsequent amendments and are entitled to receive care services following an assessment of need, as defined in the NHS & Community Care Act, 1990, section 47, and any subsequent amendments and are resident in accommodation which falls outside the scope of the Registered Homes Act 1984 and any subsequent amendments and are in receipt of, or would qualify to receive Housing Benefits if all their capital were disregarded.

Such people will usually be living in Supported Living Services, also known as Independent Living Schemes, Community Living or Group Homes. They may also be people who had been placed with foster carers but who are now aged over 18 years.

**Power to Making a Charge**

The power for a Local Authority to make a charge is derived from the Health and Social Services and Social Security Adjudication Act (HASSASSA) 1983. This Act gives local authorities the powers to charge Service Users for services arranged on their behalf.

The intention of the charge is that the Service User should make a reasonable contribution to the cost of care services based upon an assessment of income and available capital resources.

**Basis of the Charge for Care Services**

The framework for determining the charge to be made is the Charges for Residential Accommodation Guide (CRAG) issued by the Department of Health as amended by this Policy.

Service Users should have their ability to pay determined using the CRAG rules with the following options and changes:-

- Section 1, Introduction;
- Section 2, Less Dependent Relatives;
- Section 3, Temporary Residents
- Section 4, Couples;
- Section 7, Treatment of Property;
- Section 11, Liability of Relatives;
- Section 12, Students,
- Section 13, Transitional Provisions;

will generally not apply to these Service Users, however in exceptional circumstances they will be used to provide guidance and will be applied with discretion.



## Section 5. Personal Allowance

In place of the CRAG rules, the following shall apply:-

*Purpose of the personal expenses allowance.*

*The Personal Allowance for this Service User group needs to be at a level which allows the Service User to pay costs associated with his residence for which Housing benefit cannot be claimed (e.g. food, cooking and heating costs, personal possessions insurance, etc.).*

*Amount of personal expenses allowance*

*Accordingly the Personal Allowance shall be the sum of  
Income Support Personal Allowance (age related) plus  
Single Person's Disability Premium.*

*This amount will vary from year to year as DSS benefit rates change.*

*Varying the amount of personal expenses allowance*

*The personal allowance may be increased in special circumstances which must be agreed by the Service User's Care Manager.*

## Section 6. Capital

The CRAG rules will apply with the following exceptions:-

**Capital limits**

*The upper limit of £16,000 will not be applied as long as the Council provides services. All assessment rules which are qualified by this limit will be applied to the total assessed available capital.*

*For example where a resident has capital a tariff income would be calculated on the total amount above the lower limit of £10,000. Thus a resident with capital of £40,000 would be assessed for weekly tariff income of £120 per week.*

*(£40,000 less £10,000 = £30,000. Tariff income is £1 per £250. Tariff on £30,000 is  $30,000/250 = £120$  per week)*

*This rule will be amended in future should the DSS minimum of £10,000 be changed.*

**Capital Disregarded Indefinitely**

*There shall be no disregard of*

*any payment made or derived from;*

- *the Independent Living Fund*
- *the Independent Living (Extension) Fund*
- *the Independent Living (1993) Fund*

*This rule will be amended in future to allow for any other similar schemes.*

## Section 8 Income Other Than Earnings

The CRAG rules will apply with the following exceptions:-

*All income from Housing Benefit will be fully disregarded.*

*There shall be no disregard of*

*any payment made or derived from;*

- *the Independent Living Fund*
- *the Independent Living (Extension) Fund*
- *the Independent Living (1993) Fund*

## **Other Charges**

Where Service Users receive transport services as a part of the Care Services arranged by Council, they will be expected to make a contribution to the cost of such services in accordance with the current Council Charging Policy for the provision of Transport Services.



## Supported Living Schemes

### General Conditions of Residence

1. You will share a house with a number of other residents. This will be your home whilst you stay with the Supported Living Scheme.
2. You will have your own furnished bedroom and you will have the use of shared facilities such as bathroom and toilet, kitchen, laundry equipment, lounge/dining area. The exact facilities may vary from one home to another.
3. Wirral Social Services will arrange to provide care and rehabilitation services which are appropriate to your care needs. These services will be agreed with you following an assessment of needs, and written up in your Care Plan.
4. A Care Worker will be identified as your "Key Worker" and will be your main contact in helping you to deal with any problems which arise during your stay.
5. You will be able to bring personal possessions but you should discuss this first with your Key Worker as space may be limited.
6. You will have to enter into either an Unsecured Tenancy Agreement or Occupancy Licence with the landlord of the property. The landlord may be Wirral Council or a Housing Association. The Tenancy Agreement or Occupancy Licence will include various conditions which affect your residence. You should be aware of these conditions.
7. You will continue to live at the house until it is agreed that your care needs can best be met elsewhere. You should be aware that your residence is an "unsecured tenancy". This means that if it is agreed that you should move to other accommodation, you will need to give four weeks notice to your landlord and you do not have the right to refuse to move.
8. You must pay rent to the landlord of the property. The rent paid will include both the cost of your own room and a part of the cost of shared facilities. Details about the way the rent must be paid will be included in your Tenancy Agreement or Occupation Licence.
9. You will be required to pay a contribution to the cost of care services. This will be based upon your DSS Benefits and any other Income which you receive. You will be able to retain a reasonable amount to pay for your own day-to-day expenses.
10. Your Care Plan may include time spent away from your home, for example visiting a day centre. Arrangements for transport will vary from one scheme to another. If transport is provided for you, you will be required to pay a charge for the use of that transport.

If public transport is used you will have to pay the usual fares.

If transport is provided then you will be required to pay a charge based upon the Council's Charging Policy for Transport Services.

In some Supported Living schemes, the residents of the scheme club together to pay for a vehicle which is available to all the residents and which can be used as and when needed. In such circumstances, the costs will depend upon the arrangements at that particular scheme.

You will be told which arrangements operate before you take up residence.

~~~~/~~~~

I have read and understood the general conditions of the Supported Living Scheme.

I understand that I will be responsible for making rental payments.

I understand that I will be responsible for paying a contribution to care costs.

I understand that I may be required to pay towards transport costs

Signed \_\_\_\_\_ Date \_\_\_\_\_

Name (Please print)

I confirm that the resident named above understands the General Conditions of the Supported Living Scheme.

Witnessed by \_\_\_\_\_ Page 62 Date \_\_\_\_\_

Name and address (Please print)



Charging Policy



## LOCAL AUTHORITY CIRCULAR

LAC(2001)32

To: The Chief Executive  
County Councils  
Metropolitan District Councils ) England  
Shire Unitary Councils  
London Borough Councils  
Common Council of the City of London  
Council of the Isles of Scilly

The Director of Social Services

23 November 2001

### **Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities**

#### **1. SUMMARY**

- 1.1 This circular draws the attention of local councils to the issue of guidance *Fairer Charging Policies for Home Care and other non-residential Social Services*, issued under section 7 of the Local Authority Social Services Act, 1970. This circular outlines the main actions councils need to carry out to implement the guidance by the required dates.

#### **Background**

- 1.2 Problems with the variations in home care charging policies between local councils have been identified in the Report of the Royal Commission on Long Term Care (1999), and *Charging with Care*, published by the Audit Commission in May 2000. The Government took powers through the Care Standards Act, 2000 to issue statutory guidance on charging under section 7 of the Local Authority Social Services Act, 1970.
- 1.3 Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA Act 1983) gives councils a discretionary power to charge adult recipients of non-residential services.
- 1.4 Section 7 of the Local Authority Social Services Act 1970 allows the Secretary of State to issue guidance to councils on the exercise of their social services functions, including those which are exercised under discretionary powers. In exercising those functions, councils must have regard to guidance issued under section 7,
- 1.5 Section 17 of the HASSASSA Act 1983 provides that councils may recover such charges as they consider reasonable in respect of relevant services. The guidance includes advice

on a number of issues where councils need to take particular care to ensure that any charging policy is reasonable.

- 1.6 There is no presumption by the Government that all councils will charge and, where they do decide to charge for services, they also retain substantial discretion in the design of charging policies. The guidance sets out a broad framework to help councils ensure that their charging policies are fair and operate consistently with their overall social care objectives. The guidance provides clear objectives, which all councils operating charging policies should achieve. Nothing in the guidance requires councils to make existing charging policies, which go beyond the requirements set out in the guidance, less generous to users than they currently are.

The guidance may **be accessed** by visiting **our website address at** [www.dohJzov.uk/scehomecarecharus](http://www.dohJzov.uk/scehomecarecharus)

- 1.7 A summary of the responses to the consultation, and reasons for the Government's decisions is also available at the website address given above.
- 1.8 Practice guidance to help councils in devising and implementing charging policies will be issued at the end of January 2002. This will cover issues such as assessments of users' disability costs and the provision of benefits advice to users.
- 1.9 Regional workshops to help with the planning and implementation of the guidance are being scheduled for February 2002 and further details of these will be notified.
- 1.10 Monitoring arrangements are set out in sections XIX and XX of the guidance.

## **2. ACTION**

- 2.1 Implementation will take place in two phases and councils are asked to take the following action.

### **1 October 2002**

- 2.2 Councils should ensure that users receiving Income Support (IS) or Job Seekers Allowance (Income Based) (JSA-IB), whose overall income equals the defined "basic" levels plus the 25% buffer, are no longer charged from no later than this date.
- 7.3 Users receiving more than 10 hours care weekly, whose Disability Living Allowance (DLA), Attendance Allowance (AA), Severe Disability Premium (SDP), Constant Attendance Allowance (CAA), or Exceptionally Severe Disablement Allowance (ESDA) is included in an assessment of income should also have an individual assessment of their disability-related expenditure from no later than this date. For users receiving 10 hours or less home care weekly, councils may as a transitional measure continue with existing charging policies in relation to DLA, AA, SDP, CAA and ESDA.
- 2.4 From the date of issue of this guidance, for other users, regardless of the amount of service received, councils should not introduce a new charging policy, which takes AA, DLA, SDP, CAA or ESDA into account for the first time, without also providing for an individual assessment of disability-related expenditure.

- 2.5 Earnings should be disregarded as part of income in charge assessments from no later than this date.
- 2.6 The following are the main actions, which councils will need to undertake to be ready for the 1<sup>st</sup> phase of implementation by 1 October 2002.
- redesign and consult on charging policy, allowing time to take account of responses, make and notify decisions
  - identify existing users receiving IS or JSA-IB whose overall income equals the defined basic levels, plus 25% to ensure that they cease to be charged
  - identify users receiving more than 10 hours weekly home care, whose disability benefit is included in an assessment of income, to ensure that they receive an assessment of their disability costs
  - where necessary (ie, where disability benefits are taken into account), make arrangements to carry out assessments of users' disability costs; this will require appropriate staff training
  - identify users with earnings and ensure these are disregarded in any charge assessment

#### **1 April 2003**

- 2.7 All other parts of the guidance should be implemented by this date at the latest. Councils will need to plan and consult on any necessary changes in charging policies during 2002-03.
- 2.8 Councils will need to plan and model new charging systems, assessing the effects of changes on charge income - this will be particularly important for charging policies after April 2003.
- 2.9 It is important that the managerial task of designing and administering more sensitive charging policies is addressed at an early stage. It may be necessary to profile the local user population, using data from residential care charging and short stay respite care charging if data are not available from home care charging systems. It may be necessary to ask users for information, for example, on disability-related expenditure, before final decisions are made on a new charging system.
- 2.10 Where this does not already happen, councils should give early attention to provision of benefits advice to all users and carers at the time of a charge assessment. Although the provision of a fully comprehensive service is not required before April 2003, progress during 2002-03 will be important both for users and for the maintenance of charge income for some councils.

### , 3: ENQUIRIES

Enquiries about this Circular and the guidance should be made to:

Crispin Acton on 020-7972-4036 or Mike Sosnowski on 020 7972 4441 or Helen Woodhead on 020 7972 4039. Alternatively you can contact them at the following e-mail addresses:

[crispin.acton@doh.gov.uk](mailto:crispin.acton@doh.gov.uk)

[mike.sosnowski@doh.gov.uk](mailto:mike.sosnowski@doh.gov.uk)

[helen.woodhead@doh.gov.uk](mailto:helen.woodhead@doh.gov.uk)

From: OP-CC2, Department of Health, Area 216, Wellington House, 133-155 Waterloo Road, LONDON, SE1 8UG

Further copies of this Circular may be obtained from Department of Health, PO Box 777, London SE1 6XH, Tel. 0870 55 5455 or Fax 01623 724 524. Please quote the code and serial number appearing on the top right-hand corner.

Current circulars are now listed on the Department of Health web site on the Internet at:

<http://www.doh.gov.uk/publications/coinh.html>. Full text of recent circulars is also accessible at this site.

CD Crown copyright 2000. This Circular may be freely reproduced by all to whom it is addressed.

**ADULT SOCIAL SERVICES - CHARGING POLICY - SERVICE USERS  
RESIDING AT 'IN HOUSE' SUPPORTED LIVING UNITS**

**Definitions**

|                        |                                                                                                                                                           |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| DASS                   | Department of Adult Social Services.                                                                                                                      |
| PIDA                   | Public Interest Disclosure Act 1998.                                                                                                                      |
| CRAG                   | Charging for Residential Accommodation Guidelines.                                                                                                        |
| Fairer Charging Policy | Financial Charging Policy based on the Department of Health, Fairer Charging Policies for Home Care and other non-residential Social Services.            |
| Supported Living Units | To support adults to live independently in their own home environment.                                                                                    |
| In house               | Care and support is provided by DASS staff.                                                                                                               |
| Private                | Care and support is provided by the independent sector staff.                                                                                             |
| Residential            | Accommodation provided for people who are unable to manage in their own home. Meals and personal care is provided 24 hours a day, 365 days a year.        |
| Home Care              | Care provided to a service users in their own home to support a range of tasks related to everyday living. The service focuses on promoting independence. |

**ADULT SOCIAL SERVICES - CHARGING POLICY - SERVICE USERS  
RESIDING AT 'IN HOUSE' SUPPORTED LIVING UNITS**

**People interviewed during PIDA audit**

**Department of Adult Social Services:**

Director  
Personal Assistant (Director)  
Co-ordinator  
Principal Manager, Home Care & Brokerage  
Data Compliance Officer  
Service Manager, Personal Finance Unit  
Principal Manager (Resources)  
Manager, Wallasey Area, Care Services  
Manager, Livingstone Gardens, Care Services  
Manager, Birkenhead Area, Care Services  
Manager, West Wirral, Care Services  
Principal Officer, Personal Finance Unit  
Team Leader (Wallasey), Personal Finance Unit  
Team Leader (West Wirral), Personal Finance Unit  
Service Manager Asset & Support, Manager  
Service Manager, Care Services  
Projects Officer  
Reform Unit Manager

**Finance Department:**

Operations Manager, Benefits, Revenues & Customer Services  
Housing Benefit Manager  
Income Officer, Finance Department

**Department of Law, HR and Asset Management:**

Director  
Group Solicitor, Legal Section

**Audit Commission:**

Audit Manager, Audit Commission

**Other Parties:**

The Whistleblower

**ADULT SOCIAL SERVICES - CHARGING POLICY - SERVICE USERS  
RESIDING AT 'IN HOUSE' SUPPORTED LIVING UNITS**

**Timeline**

| <b>Date</b>              | <b>Event</b>                                                                                                                                                                                                                                                                                             |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| September 1997           | 3 September 1997 - Report to Social Services Committee - 'Report on Future Services for People with Learning Disabilities'.                                                                                                                                                                              |
| October to December 1997 | Members approved charging policy in relation to Supported Living Units.<br><br>Esher House Residential Home closes.<br><br>Residents of Esher House transferred and take up a tenancy at Bermuda Road, Curlew Way or Edgehill Road, Moreton Supported Living Units.                                      |
| December 1997            | Charging Mechanism as approved at Social Services Committee on September 1997 introduced at Bermuda Road, Curlew Way and Edgehill Road, Moreton.<br><br>Service users allowed additional allowance from date of placement.                                                                               |
| January 2001             | Department of Health issue two documents, 'Fairer Charging':<br>Document 1 - draft guidance - Fairer Charging Policies for Home Care and other non-residential Social Services.<br>Document 2 - A Consultation Paper - Fairer Charging Policies for Home Care and other non-residential Social Services. |
| April 2003               | 1 April 2003 – Recommended effective date for the implementation of 'Fairer Charging' in accordance with the Department of Health, Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities. (see LAC (2001)32).   |
| December 2005            | 1 December 2005 - Cabinet give approval for the implementation of 'Fairer Charging' from 1                                                                                                                                                                                                               |

|                   |                                                                                 |
|-------------------|---------------------------------------------------------------------------------|
|                   | February 2006 (or as soon as possible after that date).                         |
| February 2006     | 1 February 2006 onwards - Implementation for 'Fairer Charging'.                 |
| August 2006       | Initial Grievance submitted by the Whistleblower.                               |
| September 2006    | Revised Grievance submitted by the Whistleblower.                               |
| May and July 2007 | Employment Appeals Sub Committee consider the Whistleblower's Grievance Appeal. |
| October 2007      | The Whistleblower makes a PIDA disclosure to the Audit Commission.              |
| April 2008        | The Whistleblower ceases to be employed by the Council.                         |
| August 2008       | PIDA Report published by the Audit Commission.                                  |



## Appendix 8

### ADULT SOCIAL SERVICES - CHARGING POLICY - SERVICE USERS RESIDING AT 'IN HOUSE' SUPPORTED LIVING UNITS

#### Area Group 'In house' Supported Living Units

##### West Wirral Group

| Date of Operation | Unit                                                                   | Landlord                                                                        |
|-------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| December 1997     | Bermuda Road, Moreton<br>Curlew Way, Moreton<br>Edgehill Road, Moreton | Liverpool Housing Trust<br>Wirral Methodist Housing<br>Wirral Methodist Housing |
| May 2008          | 4 Lighthouse Road, Hoylake                                             | Wirral Methodist Housing                                                        |

##### Birkenhead Group

| Date of Operation | Unit                                                                                | Landlord                                                     |
|-------------------|-------------------------------------------------------------------------------------|--------------------------------------------------------------|
| Mid 1998          | 27 Balls Road, Birkenhead<br>70 Balls Road, Birkenhead<br>18 North Road, Birkenhead | DASS<br>Wirral Partnership Homes<br>Wirral Partnership Homes |
| October 2006      | Thomas Court, Birkenhead                                                            | Cosmopolitan Housing                                         |

##### Livingstone Gardens Group

| Date of Operation | Unit                                                                                                  | Landlord            |
|-------------------|-------------------------------------------------------------------------------------------------------|---------------------|
| March 2005        | 137c St Anne Street, Birkenhead<br>139c St Anne Street, Birkenhead<br>139b St Anne Street, Birkenhead | All Venture Housing |
| June 2005         | 212 Beckwith Street, Birkenhead<br>214 Beckwith Street, Birkenhead<br>216 Beckwith Street, Birkenhead | All Venture Housing |

##### Wallasey Group

| Date of Operation | Unit                                                         | Landlord                             |
|-------------------|--------------------------------------------------------------|--------------------------------------|
| Mid 2002          | 33 Serpentine Road, Liscard<br>3 Cardigan Road, New Brighton | All Riverside Housing<br>Association |
| November 2002     | 26 Langdale Road, Liscard<br>5 Cardigan Road, New Brighton   | All Riverside Housing<br>Association |

This page is intentionally left blank