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WIRRAL

Audit and Risk Management Committee

Date:	**Wednesday, 25 November 2009**
Time:	**6.15 pm**
Venue:	Committee Room 1 - Wallasey Town Hall

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SUPPLEMENTARY AGENDA

3. ADULT SOCIAL SERVICES - CHARGING POLICY (Pages 1 - 28)

(b) Statement from Mr M Morton

This statement has been redacted by the Director of Law, HR and Asset Management to remove all names of present and former officers except for current Chief Officers and the Chief Internal Auditor. This has been done in view of the current investigation into other allegations by Mr Morton. In addition a small number of other potentially defamatory comments have also been redacted.

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WIRRAL COUNCIL - AUDIT & RISK MANAGEMENT COMMITTEE

25th November 2009

Adult Social Services: Special Charging Policy

1. Introduction

My name is Martin Morton.

I was employed by Wirral Council between October 1990 and April 2008.

I am currently employed as the Regional Supported Housing & Homelessness Co-ordinator at 4NW – The Regional Leaders Board (formerly the North West Regional Assembly).

I assert that I was forced to resign from my post as Supported Living Development Officer within Department of Adult Social Services in April 2008 after enduring sustained and co-ordinated abuse of power on the part of senior officers of Wirral Council.

At the request of the Director of Law etc; and although I would maintain that the matters detailed in this report and my bullying allegations are inextricably linked I will confine this report to the issue of unlawful charges levied upon people with learning disabilities residing at addresses in Bermuda Road, Curlew Way and Edgehill Road in Moreton between 1997 - 2006.

However, I reserve my right to make a further statement at a later date in respect of my bullying allegations.

2. Background

2.1 This report has been prepared following a meeting of Audit & Risk Management Committee held on November 3rd 2009 where the Committee resolved that I should be approached to provide information to enable members to consider the implications of the Special Charging Policy, with particular emphasis on the question as to the date from which reimbursement should be recommended.

2.2 Matters pertaining to the Special Charging Policy have been brought before the Audit & Risk Management Committee as a result of a Public Interest Disclosure Act (PIDA) report published by the Audit Commission in August 2008 and have been subject to consideration at meetings of the Committee held on 30/9/08, 4/11/08, 23/9/09 and 3/11/09.

2.3 The PIDA report was the result of an approach I made to the Audit Commission in October 2007 after Wirral Council had failed to investigate or address the allegations I had raised in accordance with grievance and whistleblowing procedures.

(**Note:** Bill Norman (Director of Law, Human Resources and Asset Management) made reference at ARMC on 23/09/09 that I had approached the Audit Commission with four specific issues, two of which the Audit Commission investigated.

This is incorrect. All of the issues I raised in my public interest disclosure were concerned with charging, contracting and monitoring arrangements and all were addressed within the resulting PIDA report.

The Audit Commission further advised that I should also approach the Commission for Social Care Inspection (now part of the Care Quality Commission) with my concerns. Although I did so, CSCI did not consider any of the issues I raised with them to be worthy of further investigation. I found this response to be both worrying and erroneous. This view has been compounded by subsequent events and does not reflect well on the statutory body responsible for monitoring and inspecting the Department of Adult Social Services)

2.4 I had specifically raised issues in relation to the Special Charging Policy from it's inception and this culminated in it being included in my whistleblowing and grievance submission in August/September 2006, and despite the assertion by the Director of DASS in his report to ARMC on 6/11/09 (para 2.1) that nobody had raised any concerns prior to 2000.It should be noted that a Charging Policy review was proposed at Social Services Committee in September 1999.This report states

"Several other anomalies were also identified whilst reviewing the Charging policy, these included charging some clients for day care and not others, providing free day care to people in private sector accommodation and a separate assessment policy for those service users in supported living accommodation" (para 1.3)

The basic premise of my grievance was that I was being treated in a detrimental way because I would not desist from trying to address concerns in relation to supported living schemes (which essentially was what I was employed to do).

My grievance was about the way I was being treated detrimentally for trying to do my job whilst the whistleblowing aspect of my submission detailed the specific concerns I had persistently raised. This aspect of the case has always been a matter of seeming complexity but which I consider to be very simple.

I wish to state in this context that although issues relating to the Special Charging Policy were a significant aspect of my submission it was by no means the most serious concern I raised. I was particularly anxious that abusive practices, primarily but not exclusively, concerned with independent providers should be tackled as a matter of urgency. My grievance was that I was being treated in a detrimental manner because I was a whistleblower and that's why I was advised by **[firm of solicitors] ([name of Trade Union]**'s solicitor) to submit my concerns under both procedures.

However I concluded that after seven months of stonewalling by DASS senior officers that whatever procedure I had invoked there was no intention of investigating my concerns.

This led me to progress to a Grievance Appeal hearing in accordance with Wirral council procedures.

(Note: From March 2007 I had no representation from **([name of Trade Union]**after they failed to provide me with the legal advice which they had agreed to provide. When I paid for my own legal advice **([name of Trade Union]**duly informed DASS that they no longer represented me. **([name of Trade Union]**'s position in relation to my employment dispute is summed up in the following quotes made by **([name of Trade Union]**officials: *"Are you on some kind of crusade?"," You do realise you're making yourself unemployable", "You're just going to have to accept you work with* **[derogatory comment]** *", "Nobody will listen to you,* **[Officer A (DASS)]***'s the blue-eyed boy who* **[reference to achievement by Officer A]** *).*

2.5 I wrote to Wirral Council Chief Executive Steve Maddox on March 2nd 2007 in accordance with whistleblowing/grievance procedures and specifically in relation to:

- Gross maladministration
- Financial mismanagement
- Collusion with abuse
- Bullying

Mr. Maddox responded on March 7th 2007 informing me that he had put the matter in the hands of **[Officer B (Corporate Services)]** , and that I would hear from him shortly.

Although I have requested, under the Data Protection Act, access to correspondence between Mr. Maddox and **[Officer B (Corporate Services)]** indicating that they were progressing this matter in accordance with Council procedures, I have yet to receive a response, despite the request now being overdue.

2.6 The issue of the Special Charging Policy being persistently raised and consistently ignored was a key feature of my whistleblowing/grievance submission and is detailed on pages 27-34 of the bundle presented at my Grievance Appeal "hearing" which took place on July 2nd 2007. Reference is made to a number of documents where I evidence that I attempted to persuade senior officers of DASS to take appropriate action:

The following is a selective chronology of the issues I raised:

- **November 2000** I compiled a briefing note highlighting that service users subject to Special Charging Policy were excluded from Charging Policy Review. I recommended that that they should be included as *"the principles outlined in charging policy review comply more fully with CIPFA guidance on developing policies in respect of equity, consistency and simplicity*"

- October 2002 I again raised concerns about the Special Charging Policy describing the matter in an email as *"a potential time bomb and it never seems to get addressed".* I stated that *"The existing charges in relation to Edgehill Rd, Curlew Way and Bermuda Rd should cease"*

- February 2004 I compiled an Advice Note which reiterated much of what I'd already reported. However I did add that: "*It would be prudent to consider reimbursement of charges to tenants at Edgehill Rd, Curlew Way and Bermuda Rd initially to cover the period of the consultation process. It should be noted that the legitimacy of the Special Charging Policy has already been challenged by the Wirral Mind Advocate and members of staff within the West Wirral Learning Disabilities Service. This matter could be subject to legal challenge and has the potential to compromise the Department"*

- May 2004 I further highlighted inconsistencies in charging policies via email as follows:

"Birkenhead [referring to Balls Road] *seems to operate a charge that bears no relation to any policy, Cabinet approved or otherwise and differs from tenant to tenant. Meanwhile Wallasey is not subject to any charges with the result that tenants are racking up savings and could ultimately make them responsible for paying rent and (being) ineligible for SP (grant).*

The SP team will definitely pick up on these anomalies and it will not reflect well on our Department

I know that **[Officer C (DASS)]***/* **[Officer D (DASS)]** *are not in favour of rocking the boat but I would suggest that charges are halted at Birkenhead, so that at least there is a semblance of consistency between the two and explain to SP that the charging policy is subject to consultation. This would further highlight the discriminatory charge at West Wirral – but I feel I've done that one to death"*

- July 2004 My concerns continued to go unheeded and I was compelled to write a further email*: "I am further concerned that I am being asked to collude with institutional financial abuse.....this is unacceptable and I am requesting that action is taken to cease these charges (which are without authority and are discriminatory)....I know that work is being undertaken in relation to these issues but I would like to stress the urgency of a satisfactory resolution"*

- November 2004 In a memo from **[Officer E (DASS)]**, to **[Officer A (DASS)]** my former colleague stated:

"Currently the Department is charging some of our service users in establishments such as Curlew Way and Bermuda Rd while others such as Cardigan Rd, Langdale and Serpentine Rd pay nothing.

I understand from Martin that this is to be looked at under the Revised Fairer Charging Policy.

It has been suggested that until this has been completed ,to be fair to our service users, charges being made for some residents should be put on hold until the policy is finalised.....This would allow a breathing space while the issue of charging is resolved. Would you be in agreement with the current charges ceasing as soon as possible?"

- December 2004 A lack of any response to this memo prompted my comment via email that "I am very disillusioned that I am effectively being asked to collude with this discriminatory policy" and which led to the following email exchange

Martin Morton to **[Officer C (DASS)** ***and*** **Officer D (DASS)]** :

"I understand that matters in relation to charges in supported accommodation are being addressed in relation to fairer charging. However I am continuing to have enquiries with regard to possible timescales for this to be resolved, especially as this is causing difficulties in relation to tenants with mental health needs and learning disabilities accumulating large amounts of money that is affecting their ability to claim benefits and manage their money effectively. Can you advise"

[Officer C (DASS) ***and*** **Officer D (DASS)]** replied respectively:

"*I have advised* **[Officer E (DASS)]** *that we need to have an overall strategy and not make a series of pragmatic decisions"*

It is one of the policy options for Council and then in the budget Cabinet in febrruary .So **[Officer D (DASS)]** *is right we shouldn't "decide" things before that.The Charging policy Review Group hasn't met yet and will be represented by users and carers and each political group.This is not likely to happen now until the new year.My suggestion is that any new policy won't now be implemented until April 2005.In terms of users accumulating large amounts of money,dare I say "let them spend some on things they want" so long as it's their ideas"*

I replied:

"I think we'd all agree on your last comment ,however in the case of one service user who the original query was concerned with, there's only so many leather coats a person can buy (13 at the last count!)"

A further six months elapsed before I enquire of **[Officer C (DASS)]** in **May 2005**:

"I need to respond to an enquiry from an independent supported living provider who is basically saying "tenants need to be subject to fairer charging because they're accumulating so much money it's affecting their benefits" and what is SSD's current position?.

After our Divisional meeting yesterday were financial matters were paramount it appears to me there's a whole raft of money the department is missing out on particularly in relation to a Supported Living provider which was identified as a "hot spot". What's more the implementation of an appropriate charging policy would assist in relation to certain providers who make unspecified charges in relation to "care and support" when it's SSD who foot the bill".

2.7 Subsequently a Charging Policy Working Group met in **August 2005** – *"Several months later than was originally anticipated*". Although I recommended a participant

from Mencap be part of this group, there was no representative from a learning disabilities perspective. This is specifically detailed as follows in the minutes of this group held on August 22nd 2005:

"*[Officer C (DASS)]** *reported there some groups, and service types ,not being charged in the same way. These were 1) Adults with Learning Disability who attend Day Centres and 2) Adults living in Supported Living Services – previously classed as residential care. The Group felt this was* ***unfair*, and that everyone should be assessed in the same way, although it was noted the group most affected were not represented at this event*".

The exclusion, even if unintentional, of a group of people who are in most need of support and advocacy in respect of their finances does not reflect well on the process of consultation or the Council. The Health & Social Care Committee agreed to make recommendations to Cabinet following a period of further consultation with service users and carers. The Cabinet report presented on **December 1st 2005** stated that *"current financial pressures demand that further options are considered to raise income in a fair way that is consistent with the principles outlined in the Fairer Charging guidance".*

No reference is made in the report to the Special Charging Policy or that the Charging Policy Group considered it to be *"unfair".*

A Briefing Note was issued in **January 2006** which stated that *"adults aged under 65, are included in the charging policy (some for the first time) and we will communicate directly over the next few weeks".*

I am not aware that this happened (if at all) for a further twelve months. It certainly hadn't taken place by **June 2006** as evidenced by an email I sent to **[Officer C (DASS)] and [Officer D (DASS)]**:

"I have spoken to **[Officer F (DASS)]** *today and it would appear that tenants are now being charged in accordance with the domiciliary fairer charges and not the residential rate or the "special charging policy" (which has been ceased to be paid).*

Therefore I would suggest this formula should now be applied across all supported living set ups (internal and external) and a process of informing and implementing the charging policy be agreed"

[Officer D (DASS)] replied:

"Although I agree with your recommendations regarding the introduction of a charging policy across the sector, the question below was about our in-house services. How much were people being charged in the past ?. When did it cease ?. How much are they being charged now ?.For other people in the in-house services, are they being charged ?, If so how much. Does this address any shortfall caused by West Wirral not being charged as much any more?.Can "someone" work this out please".

2.8 This was the background to issues specifically pertaining to the Special Charging Policy which I raised within my grievance / whistleblowing submission which eventually led to a Grievance appeal hearing in July 2007. Prior to this hearing I had a series of meetings with **[Officer A (DASS)]** **and** **[Officer G (DASS)]** . After declaring in these meetings that he was not accountable to me in relation to matters I had raised I presented a set of 10 questions **to [Officer A (DASS)]**, at the request of **[Officer G (DASS)]**, in **February 2007** which I felt remained outstanding.

The specific question I posed to **[Officer A (DASS)]** , about the Special Charging Policy was::

"*Am I right in suggesting that "Fairer Charging" in relation to supported living services was introduced in January 2007,if so, why was there an unreasonable delay in it's introduction?*, *as it is my understanding that it applies charges in accordance with Domiciliary Care arrangements which is something I outlined years previously (2000 to be precise!)*

Again the Council has lost out on large sums of money whilst simultaneously taking money from tenants in Curlew Way, Bermuda Rd and Edgehill Rd, to which it had no legal right.

Are there any plans to reimburse tenants of these addresses for monies that were unlawfully levied over a prolonged period of time?".

[Officer A (DASS)]'s response was as follows:

"*You are not right in your suggestion. It applied to anyone in non-residential care and has been applied once an Assessment has been completed. The application of fairer charging throughout 2006 has been a result of consultation and assessment of individuals. The Council has not lost out on large sums of money as the charges are fairly low, so as describe them is large is incorrect. These charges by the Council are not unlawful, they are a contribution made by the tenants for their* ***daily living expenses (my emphasis).****However I understand it is being reviewed to ensure full complicity with charging regimes*.

2.7 I provided a detailed response which included a chronology and comments which refuted every aspect of **[Officer A (DASS)]**'s response. I feel that a substantial part of my response is worth repeating, primarily because I retain the same stance to this day:

"I am assuming that the **[Officer A (DASS)]** *has been briefed by* **[Officer C (DASS)]** *with regard to this particular question .If so he has left* **[Officer A (DASS)]** *particularly exposed and therefore in consideration of the above chronology I would maintain that it is not myself who is "incorrect" or "not right".*

It is apparent that a charge for non-residential care was deemed to be required from 1997 (otherwise why would 16 people with learning disabilities be subject to charges from this date?).

*Therefore why did it take a further **9 years** to implement across all supported living services ?. (The unreasonable delay in implementing an equitable system of charging cannot be explained away by the need for "consultation and assessment").*

Consequently I calculate the financial loss (based on DASS calculations) to be at least £1.5 million. **[Officer A (DASS)]** *claims that I am "incorrect" to suggest that this is a large sum of money).....*

Social Services simply did not have the right to take the money from these vulnerable people. The Department certainly would not have got away with such charges with any other service user group and probably explains why the "special charging policy" was never subject to any consultation processes because I cannot imagine that any organisation which represents people with learning disabilities would ever endorse such an exploitative charging mechanism.

DASS's position in relation to this charge is indefensible and it is significant that the **[Officer A (DASS)]** *fails to address the matter of reimbursement to tenants. I assume that this is because the sums involved amount to approximately £500K – which taking into account the Department's ongoing financial crisis is clearly considered untenable (The irony of course being that if the Department had been able to organise the implementation of a comprehensive and fair system of charging much earlier perhaps the financial crisis might not be so pronounced.*

However I would strongly advocate that vulnerable people should,not have to,quite literally ,pay for the Departments unreasonable delay in implementing a fair charge in relation to ALL supported living services AND failing to cease charges which they knew to be unethical and illegal.

[Officer C (DASS)] ***and*** **[Officer D (DASS)]** *quite clearly recognized that the Department was in a vulnerable position in **February 2004**.....*

The former stated:

"Once we go for a "reimbursement the covers blown. However we can't bury our head in the sand for too much longer as the charging review group will start soon (it could be better to leave it to that group to consider).

By the book :- there is no separate charging policy for this service, so it could be argued the domiciliary care charging policy must apply (and should have since '97 and that will mean a hefty reimbursement.

I would suggest we go to Cabinet in the political downtime (May –June) to get agreement for a "special charging policy for supported living as part of the budget strategy".

Meanwhile **[Officer D (DASS)]** does not concern [his/herself] with issues of financial mismanagement/ abuse but instead comments; *"I am further disturbed by the staff at West Wirral complaining about this".*

These two statements neatly encapsulate how the Department tends to turn the moral universe upside down to justify their ends.

Somehow, suddenly it becomes acceptable to financially abuse vulnerable service users, expect staff to collude with abuse, dupe Elected Members and woe betide any subordinates who dare challenge this view.

I was prevented from having any further input into the process by the actions of senior management, which also be addressed as part of my bullying allegation.

2.8 When I took the matter to a Grievance Appeal hearing held on **July 2007** I naively thought I would get a fair hearing and the various matters I had raised would be finally be addressed.

However after taking ten months to bring the matter to the attention of members I withdrew from the process for reasons that will be a key feature of a forthcoming investigation into my allegations of bullying.

(**Note:** This Appeal hearing was chaired by Cllr. Pat Williams who was part of the Charging Policy Group who had recognized in August 2005 that the Special Charging Policy was "*unfair*". Also part of this group was Cllr. Denise Roberts, who addressed Council on November 2nd 2009, to reject a proposal that there should be an external investigation into the issues arising from my grievance/whistleblowing allegations. I would question whether under the circumstances Cllr.Williams or Cllr.Roberts should have made a Declaration of Interest).

2.9 Subsequently I approached **[Officer B (Corporate Services)]** and **[Officer G (DASS)]** in October 2007 enquring whether an investigation had taken place into my whistleblowing allegations.

Their respective responses and actions will also need to be considered as part of the investigation into my allegations of bullying.

2.10 Therefore having exhausted all internal processes I approached the Audit Commission in accordance with the Public Interest Disclosure Act on October 16th 2007

2.11. The Audit Commission subsequently published their report "Adult Social Services – follow up of a PIDA Disclosure" in August 2008 and it was considered by Wirral Council's Audit & Risk Management Committee on September 30th 2008.

I have raised concerns directly with the Audit Commission in respect of this report, most particularly in relation to the appropriateness of the organisation under investigation (Wirral Council) having to pay the Audit Commission £15,250 for the report. I am not suggesting any impropriety but I am concerned that Wirral Council had the opportunity to direct the investigation and amend the final report. There were a number of specific concerns pertaining to the information that was or was not provided by DASS senior officers in relation to the Special Charging Policy which I have extracted from an email sent to Iain Miles and Michael Thomas from the Audit Commission on 25th September 2008:

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"The matters I wish to draw to your attention are :

- *Page 1 (paragraph 1) of the report states that I approached the Audit Commission in **October 2007** with a PIDA disclosure and yet officers of Wirral Council (P12,para.38) claim that my post (Supported Living Development Officer) had been vacant since **May 2007**.The report records this statement as fact. This is simply untrue. The post became vacant upon my resignation in **April 2008**. I therefore consider the claim that there was no-one around to "identify cases where unfair charges were applied" to be deliberately misleading……. Moreover Senior Officers of Wirral Council already knew about unfair charges and had done so according to the report "for several years"/" since 2001" (p.6 para.14 & p.13 para.42 respectively) .*
- *Page 5,para 10 of the report is particularly worrying as it states that: "**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". The answer to this question would be apparent if the matter had been investigated properly…… I provided details of addresses (Curlew Way, Bermuda Rd, Edgehill Rd. It was never applied elsewhere) and excessive charges (£81.25 -£101.25 per tenant per week) which would have been confirmed if financial records were scrutinised. Were Wirral Council officers asked to produce a copy of a Committee report sanctioning the charges. It would appear from the report that they weren't. I simply do not understand this. There has always appeared to be a marked reluctance on the part of the Audit Commission to adequately address the issue relating to institutional financial abuse. Instead the report accepts the utterly meaningless explanation offered by Council officers: "We understand that the charging policy was due to discrepancies between different housing units and how service users were charged".(P.12 para.39). There is a much more succinct and accurate explanation: if you take money from an individual (vulnerable or otherwise) to which you have no right it's called theft. The result of this theft left a young man with learning disabilities so destitute that he has to apply to a welfare fund to buy clothes. This wasn't an accounting error. This was systematic and callous abuse and is evidenced by the statement recorded in an email by a Senior Officer of Wirral Council who no doubt was questioned during your investigation: "Once we go for reimbursement our covers blown".*
- *To add insult to injury it would appear that to minimise the compensation due to victims of financial abuse, the Council "commits" itself to undertaking financial assessments that would identify the amount of compensation that should be paid from April 2003. Why does the Audit Commission find this to be acceptable?. The tenants of Bermuda Rd, Curlew Way and Edge Hill Rd were being financially abused from 1997 as charges were backdated (not 1999 as stated in your report -P.12 para 39) What is the rationale that compensation be awarded from April 2003.The unlawful and excessive charges clearly relate to the period Oct 1997 - 2006 (Edgehill Rd) and Dec 1997 - 2006 (Bermuda Rd & Curlew Way).*
- *Moreover it would be appear that it is acceptable that tenants will have to wait until March 2009 for assessments to be complete. The Council agreed to*

compensation 5 years ago and as yet, as you state in your report, " No such compensation has yet been given....." (P.12 para 40).There is no reasonable rationale for this further delay. It is a matter of simply adding up what charges were made upon the tenants of 3 addresses between 1997 - 2006 and paying it back……

- *I may not appreciate the protocols, politics and processes involved in compiling a PIDA report, however I am concerned that the final report contains the expression "**It is not clear....."** on 3 separate occasions……*
- *I was surprised to read that "draft proposals for contract monitoring are currently being progressed which may include the appointment of a Supported Living Development Officer" (P.9,para 24).Putting aside the matter that this was my substantive post, I am taken aback by the fact that the Audit Commission accepts such vague, non-committal expressions as "draft proposals" and "may". There is no coincidence that the absence of this post has directly contributed to the headline in the Daily Post 23/9/08: "Number of Vulnerable Adults Abused Doubles" .If there are "no formal arrangements" (P9,para 24) to monitor Supported Living providers public money will continue to be wasted and vulnerable people will continue to be abused*

Needless to say I am deeply disappointed by the report, not just because of the content but also because of the inordinate delay in reporting on straightforward matters of fact. That you only started investigating my disclosure when my position became untenable with Wirral Council (January 2008) is a matter of grave concern……..."

2.12 Audit & Risk Management Committee (30th September 2008*)*

Iain Miles presented the PIDA report to ARMC and made specific reference to Bermuda Road, Curlew Way and Edgehill Road.

The minutes of this meeting state:

"The Director of Adult Social Services had welcomed the Audit Commission report, and **[name of officer deleted as not in Minutes]***(the Head of Service - Wellbeing and Communities) referred to the Action Plan that had been produced to ensure compliance with the recommendations. She was confident that all of the issues had been addressed by the Department, and commented that a police investigation had concluded that there had been no illegal events. However, there remained concern that there was a risk that an independent Supported Living provider could be charging people unfairly for services, although there was no evidence of this. She indicated that a review was being undertaken to ascertain whether people had contributed more than was due under Fairer Charging for services provided by the Council. The review was planned to be completed by March 2009 and where it became clear that service users had contributed too much, the Department would ensure that reimbursement payments would be made. In response to a question from a member, the Head of Service (Wellbeing and Communities) indicated that although there had not been a 'special charging policy' for care in 1999, some Supported Living service users may have been expected to pay for*

day to day expenses such as food and transport. It was unclear whether such an arrangement had been approved by members"

[Officer D (DASS)] also replied in answer to a direct question concerning financial liability to the Council in relation to the special charging policy - "***there is no financial liability"*** and that the Special Charging Policy was a matter of ***"daily living costs".***

This exchange was not recorded in the minutes and despite entreaties from myself and others that this was "*the most significant exchange of the meeting*" and should be recorded in the minutes, and despite reassurances that they would be, the minutes have never been rectified.

2.13 ARMC 4/11/08.

John Webb (Director of DASS) presented a report to ARMC.

Minutes of this meeting state:

"He (John Webb) reported that to date, assessments had been undertaken on 351 people and, of those, it appeared that 8 cases had been assessed under the 'Charging for Residential Care Guidelines', rather than 'Fairer Charging' being applied. However, where higher incorrect charges had been levied, re-imbursement would be made. The total financial liability at the present time was ***£78,499.62****. In response to a question from a member, the Director was unable to confirm whether any of the* ***8*** *cases referred to were in relation to occupants of Bermuda Road, Curlew Way or Edgehill Road Supported Living establishments. In response to members comments, he proposed to provide information direct to members in relation to the location of those people who had been incorrectly assessed. With regard to concerns expressed by members that, without authority, a 'special charging policy' had been applied, he indicated that the funding arrangements for people in Supported Living were complex, with the service costs being funded from three sources:*

- *Housing – funded mainly by Housing Benefits*
- *Support Costs – funded by Supporting People and DASS – sometimes with funding from Health*
- *Daily Living Costs – met by individuals alone or as a living group.*

*The Director reported that he understood it to be around the '****Daily Living Costs'*** *that concerns had been highlighted and, whilst work to address concerns with independent providers continued, 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.

The Director believed that the term 'special charging policy' had been born in the area of 'daily living costs'. Although archive files from the time were no longer available, officers who had been employed in the Department prior to the introduction of Fairer Charging were clear in their recollection regarding some preparatory work that had been undertaken. However, they had confirmed to the Director that to their knowledge no special charging policy had been agreed or applied by the Council. He proposed to issue guidance in relation to daily living allowances but commented that it rightly remained an area for discretion. A member referred to paragraph 39 of the Audit Commission Summary Report, which suggested that a charging policy was applied at some Supported Living establishments. The Director commented that having reviewed the available information, it appeared that any charges applied related to assessments under the 'Charging for Residential Care Guidelines', rather than the Fairer Charging policy which was fully applied in 2006.

The Director referred to specific ongoing concerns in relation to an individual provider obstructing the application of Fairer Charging and he indicated that the Department, with legal advice, was now pursuing other processes to secure compliance, with regard to the remaining financial assessments. He reported also upon progress with the accreditation exercise for contracting services and safeguarding vulnerable people and expressed the view that a robust safeguarding policy and procedure were in place in Wirral."

I was incredulous at the presentation by Internal Audit at this meeting, the Director's report and the responses that he and **[Officer C (DASS)]** gave to direct questions posed by members.

I was particularly concerned that the Director did not know if the newly identified financial liability of £78, 499.62 (previously denied by **[Officer D (DASS)]** at ARMC on 30/9/08) applied to properties at Bermuda Road, Curlew Way and Edgehill Road. I find it inconceivable that the Director knew nothing about these properties, especially when these were the only properties which I had ever raised as part of the PIDA and the only properties mentioned by Iain Miles at the previous meeting of ARMC. I was further concerned by reference to only eight tenants, knowing as I did that the original tenant cohort at the West Wirral properties consisted of sixteen people.

I was further perplexed by the continuing reference to **"daily living costs"** and the denial that there had ever been a Special Charging Policy. As previously evidenced senior officers of DASS had known for years that there had been a policy and it is even noted that they had known within the PIDA report! (See para 2.11).

I found the specific and persistent reference to Balls Road alarming, as the issue under consideration was whether a Special Charging Policy was ever applied at Bermuda Road, Curlew Way and Edgehill Road and if so the potential financial liability to Wirral

Council. I could not understand the motive for introducing an entirely bogus (albeit worrying) issue into the proceedings. As previously detailed in 2.6, DASS had known about the charges issues at Balls Road since 2004 (not September 2008 as claimed by the Director).

Ongoing disciplinary investigations pre-empted any further consideration of the implications arising out of the PIDA report and previous ARMC meetings.

However I was concerned that the £78,499.62 was the figure still being promulgated as DASS's financial liability in this matter. This figure was stated as being definitive by the independent investigator, Vic Hewitt.

2.13 Meeting with Chair of ARMC, Internal Audit, Audit Commission, Cllr. Mountney, Mrs. Margaret Robinson 30/4/09

At a specially convened meeting of the above, representatives from Internal Audit **([Officer H (Internal Audit)]** and David Garry) reported that £78K "overcharge" applied to eight unidentified people.

At the meeting I provided information in relation to individual charges that had been made upon West Wirral tenants which called into serious doubt figures that had been presented to ARMC, and presumably to Vic Hewitt as part of his disciplinary investigation.

I subsequently submitted a report to Bill Norman evidencing that the full extent of unlawful charges made upon tenants at Bermuda Road, Curlew Way and Edgehill Road to be approximately £503,000.

I stated in the report:

"*Information verifying these charges should be available in DASS accounts. Tenants paid by standing order and so their own bank accounts would be able to detail the charges as would ledgers kept to account for tenants finances held within the establishments.*

Internal Audit could identify this information quite easily if the will was there,but clearly it would seem they are pursuing a quite different agenda"

2.14 ARMC 23/9/09 Report of the Chief Internal Auditor

Adult Social Services – Charging Policy – Service Users Residing at In-House Supported Living Units

This report concedes that *"The calculations in respect of service users at Bermuda Rd etc; are more complete because of detailed information provided to Internal Audit by the whistleblower"* (para 1.7.21)

I would suggest that this surely raises the question as to why the whistleblower was able to provide information that DASS were unwilling/unable to provide.

The report finally concedes that charges levied upon tenants in Bermuda Road, Curlew Way and Edgehill Road were under the auspices of a "Special Charging Policy" (para 1.4.7/1.4.8)

However "*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. These are very significant documents*" (para 5.2.3).

The report summarises the findings and concludes (para 5.11.4 – 6.13):

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

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" (paras 5.11.4 – 5.11.8)*.*
e complaint) and a Whistleblow (which concerns

danger or illegality that has a public interest or service user/customer aspect).

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.

CONCLUSIONS

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.

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.

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.

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.

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.

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****.*

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.

The delay in implementing Fairer Charging at the other 'in house' Supported Living Units across Wirral (apart form 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.

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.
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.
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).
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.
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".

Despite the report claiming that the Council had taken an *"intrinsically reasonable approach*" (para 1.7.11) and that, "*On balance, however ,officers consider that the policy approved by Members on 3 September 1997 was, at the time reasonable and thus lawfu*l", (para 1.7.12) there was very little evidence provided to demonstrate *"reasonableness*" or *"balance*".

Although I was given the opportunity to address ARMC and there were many areas covered by the report which I wished to take issue (7 pages worth) I chose to concentrate on the issue of reasonableness ("*The Council's legal power to charge is limited to what is reasonable" para 14.10).*

I detailed a number of reasons why the Special Charging Policy should still be considered "*unreasonable* " for the entire duration that it was imposed on tenants of Bermuda Road, Curlew Way and Edgehill Road , regardless of the impact of the "*very significant* " documents described above .

However none of my comments were originally recorded in the published minutes of ARMC.

2.15 ARMC 3/11/09 Report of the Chief Internal Auditor

Adult Social Services – Charging Policy –Service Users residing at "In –House" Supported Living Units during the Period 1997 -2003

I would ask members to clarify the respective positions on the Special Charging Policy:.

- Internal Audit – unlawful 2000 - 6
- Director of DASS –unlawful 2000- 6?
- Director of Law - unlawful 2003-6

What is the rationale for these decisions and have their respective positions changed and if so why have they done so ?.

As a point of clarification has the position been revised from the Director of Law's stance in the light of the 2000 report (p.26/27 Appendix 4) written by myself as Supported Living Development Officer?.

Can I further refer ARMC to Director of DASS's report (para 2.1 p.51): "*It does not appear to me from the documentation I have seen, including that presented to internal auditors that the policy agreed in 1997 was challenged or questioned in the years immediately following up until late in 2000*".

I have previously referred in para 2.4 to the Social Services Committee report dated 29th September 1999 (which you will be aware of because it was referenced in the Internal Audit report to ARMC on 23/9/09) and specifically para 1.3 which curiously is not referenced by Internal Audit:

"Several other anomalies were also identified whilst reviewing charging policy. These included..... a separate assessment policy for those service users in supported living accommodation.

Therefore it was known that there was an issue with the special charging policy the same year it was introduced, which is prior to 2000.

Again referencing para 2.1 the Special Charging Policy "*was not applied consistently to subsequent Supported Living places that were being established*".

This is incorrect . The Policy was not applied at all to either in-house or external supported living services either established prior to West Wirral (Balls Road, Shrewsbury Road, North Road and Fellowship House) or subsequently (Cardigan Road, Langdale Road, Serpentine Road, Livingstone Gardens, Grange Mount)

As ever with the various reports that have been presented to ARMC since September 2008 in response to the Audit Commission PIDA report there seems to be more questions than answers and I have many concerns which I could dispute or seek clarification.

However I wish to concentrate further on the specific issue of "*reasonableness*" which appears to be the crux of this particular matter.

3. **Reasonableness & reimbursement**

I maintain that the special charging policy which was applied to disabled people who resided at in-house supported living establishments Bermuda Road, Curlew Way and Edgehill Road were *"unreasonable* " and therefore "*unlawful"* and that a full reimbursement of charges made during this period should be made, with interest and without undue delay.

3.1 Reasonableness

I would request ARMC consider the following:

3.1.1 The Special Charging Policy levied on tenants was manifestly and grossly unfair and therefore unreasonable and unlawful (the legal use of the terms of unfair and unreasonable are seemingly interchangeable but I will defer to Mr. Norman on this matter).

3.1. 2 Report of the Chief Internal Auditor Audit Commission "Charging with Care" (para 4.3.1) – "provided that decisions over the principles related to charging are **properly debated and resolved** then the resultant approach can be considered to be reasonable". No evidence to suggest that Special Charging Policy was ever "properly" debated or resolved has been offered.

3.1. 3 It is unfair/unreasonable to subject a particular group of people (people with learning disabilities) to a separate, discriminatory charge

3.1.4 Committee may have permitted debate but there are no minutes to indicate "debate" took place and the resolution is clearly at odds with the recommendation of the report presente. The report references charges being about level of need while the resolution refers to level to income (reference 4.1.1).

3.1.5 The Special Charging Policy was implemented without any consultation (bringing further into focus the question of whether the matter could have been considered to be "properly" debated) .Indeed as previously highlighted it would appear Learning Disabilities advocates or interest groups have never been formally involved in consultations relating to charging policies. (Notes of Charging Policy Consultation meeting held on 22nd August 2005 :

3.1.6 It is ludicrous to suggest that the Special Charging Policy was not applied "consistently" as the Director of DASS claims in 2.1 of his report to ARMC. As I

stated in the questions to **[Officer A (DASS)]** submitted as part of my Grievance Appeal submission and quoted in para 2.8:

"*The Department certainly would not have got away with such charges with any other service user group and probably explains why the "special charging policy" was never subject to any consultation processes because I cannot imagine that any organisation which represents people with learning disabilities would ever endorse such an exploitative charging mechanism".*

A specific example where the imposition of the Special Charging Policy would have undoubtedly met with resistance was Fellowship House, which became part of West Wirral Area in 2000.The tenants of this property would not have tolerated such an excessive charge whilst they were paying £25 per week "all-in", which included food and utilities. Tenants of the other West Wirral properties meanwhile were charged in accordance with the Special Charging Policy (in 2000 the highest charge would have been £83.75 per week) PLUS they had to pay for food, transport, utilities from their disposable income.

As requested by ARMC chair at the meeting held on 23/9/09 Appendix 2 (page 19) of the Report of the Chief Internal Auditor provides a list of contemporaneous Local Authority comparators.

3.1.7 I contend that **not one** other Council supports the Wirral stance in relation to the Special Charging Policy and supports my assertion that the Special Charging Policy was unreasonable.

(Can the Chief Internal Auditor please clarify para 5.1 p 10 of his report and identify which Council he thinks had comparable charges to Wirral?).

Comments include:

Local Authority:

B) describes policy as: **"quite severe"**

C) states the principle of fairer charging has been: **"breached"**

D) states: **"this approach puts people with a disability at a distinct disadvantage"**

G) notes that they charged: **"approx half of what Wirral charged"**

H) reflects (quite rightly in my opinion) the need to consider the issues of: **"hardship" "right of appeal" and "capacity". (**Again there is no evidence to suggest that these important matters were properly considered let alone fully "debated or resolved").

3.1.8 It is unreasonable to take an average of 44% of someone's overall income. (reference para 4.2.2 Report of Chief Internal Auditor). (**Note** : this is 4% above the highest rate of income tax).

Also in reference to para 4.2.2 Report of Chief Internal Auditor I wish to clarify that the comment I made in relation to charges exceeding £100 per week (£101,25 per week to be precise) refers to 2004, and I made reference to 100% of "disability income" (Disability Living Allowance and Severe Disability Premium) not 100% of total income. Neither of these comments were recorded in the minutes)

3.1.9 There should never have been a separate charging policy for supported living schemes (and indeed there isn't one now). This is neither fair, equal or consistent.

[Officer C (DASS)] stated in his email from February2004) that: "*It could be argued the domiciliary care policy must apply (and should have since '97) and that will mean a hefty reimbursement".*

This acknowledges that there should never have been a separate charging policy in the first place and that then, as now, the same policy which applies to domiciliary services should have been applied in this case. (This particular email is part of a very significant exchange which will form part of my conclusion)

3.1.10 The differential between the Special Charging Policy and the charges brought about as part of the Charging Policy Review are detailed on pages 26/27 of the Report of The Chief Internal Auditor .These pages are a Briefing Note I compiled in 2000 and I would ask that members give the note particular consideration.

3.1.11The issue of hardship was a reality for some (but not all) of the tenants in Bermuda Road, Curlew Way and Edgehill Road during the period of time that the Special Charging Policy was applied. The case of hardship relating to Mr.C can be confirmed by a current and former employee of Wirral Council.

3.2 Reimbursement

3.2.1 Since this matter has come before ARMC in September 2008 I have borne witness to members being asked to consider financial liability in respect of the Special Charging Policy change from **none (** 30/9/08) to **£78,499.62 (** 4/11/08) to **£116,000** (23/9/09) to **£243,700 (£116,000** from period **2003-6** and **£127,700** from period **2000-2003)**(3/11/09).

I am particularly concerned about the £78K that was detailed by Mr. Webb in November 2008 and would like to ask the Committee to request further details as to how that figure was arrived at, as I understand they relate to eight cases assessed under the Charging for Residential Care Guidelines (CRAG) rather than Fairer Charging being applied" (ARMC minutes 4th November 2008).

3.2.2 However it is my belief and understanding based on all the evidence and on information I have obtained from DASS, that the true figure for a full reimbursement is nearer £500K .This is the figure that I have maintained all along that should be reimbursed to tenants at the West Wirral properties

3.2.3 I would suggest that the calculation arriving at £127,700 is incorrect. (reference 7.2 page 11 Report of Chief Internal Auditor)).It would appear that this figure was arrived at by calculating "*the amounts service users paid during the period ,which were in excess of the charge that would have been levied had the recommendation of the wider departmental charging policy been applied to supported living*". Might I make reference to 1.7.19 of Internal Audit report considered by ARMC on 23/9/09 in relation to the retrospective application of charges: "*Legally the Council is precluded from seeking to recover this money retrospectively; the money is lost*" . It is simply illegal to try and reduce the financial liability to the Council by applying the charging policy that should have been in place instead of the Special Charging Policy

3.2.3 The Report of Chief Internal Auditor presented to ARMC on 23/9/09 asks members (para 6.5 p.28) to consider reimbursement of charges to West Wirral tenants for the period between April 2003 and February 2006 as such charges were "*excessive*" It should be noted that Special Charging Policy was still being applied at least until June 2006.

3.2.4 This is evidenced in an email I sent in June 2006 informing **[Officer I (DASS)]** that the Special Charging Policy had finally ceased. She replied: "*The **inequity** of the charging policy has been a cause for concern for some time and has been brought to the attention of the group looking at Fairer Charging on a number of occasions".*

3.2.5 Unfortunately as an email forwarded to myself from **[Officer E (DASS)]** to **[Officer C (DASS)]** demonstrates that when the Special Charging Policy ceased the financial mismanagement continued : *"The tenants at West Wirral are receiving invoices from Client Financial Services which are clearly based on residential assessments e.g £409.28 per month.*

"As you can imagine this is causing quite a lot of distress and renders most of them penniless!. The manager had informed them all that they would be *charged 30% of*

their disposable income plus £7.00 and now these bills have arrived like unexploded bombs".

3.2.6 This attempt to minimise the financial liability to the council by putting disabled people at a financial disadvantage has been a persistent feature of this appalling case. It does not reflect well on certain Senior Officers and Elected Members of the Council that they would even contemplate such an approach. It is simply ethically and morally reprehensible and, as I stated at the last meeting of ARMC, brings Wirral Council into further disrepute.

3.2.7 As far as I understand the ethos of the Government policy "Valuing People Now" is that people with learning disabilities should have the same citizenship and equality rights as everyone else. Wirral Council is undermining this ethos by actively denying disabled people their full financial entitlement and therefore I implore ARMC to reject outright the recommendations contained within para 15.2. of the Report of Chief Internal Auditor

4.Balls Road

4.1 I have grave concerns about the situation at Balls Road and find the sparse information contained within reports of DASS and Internal Audit to be reminiscent of the west Wirral debacle.

Members will be aware from details in para 2.6 of this report that I expressed my concerns in relation to Balls Road in May 2004. Although I mention Birkenhead, my specific concerns were in relation to Balls Road (this can be confirmed by **[Officer J (DASS)]**).

"Birkenhead seems to operate a charge that bears no relation to any policy, cabinet approved or otherwise and differs from tenant to tenant.....

I know that **[Officer C (DASS)/ Officer D (DASS)]** *are not in favour of rocking the boat but I would suggest that charges are halted at Birkenhead, so at least there is a semblance of consistency....".*

This matter was brought to the attention of ARMC by Director of DASS in **November 2008** for reasons that are not entirely clear (as it wasn't a part of the Audit Commission PIDA investigation) and yet twelve months later we are no clearer as to what the issue is other than is not related to care charges (reference 4.2.3 page 10).

However these issues appear to relate to "*rent and service charges*" and the Director of DASS now admits to being *"mistaken*" about the matter.

I understand that issues relating to Balls Road are to be considered at Cabinet rather than ARMC. What possible justification can there be for that, as it would appear not be an open and transparent process.

There seems to be an implication that tenants at Balls Road have been paying rent and excessive service charges on top of HB payments. Can the Director of DASS provide this Committee with reassurance that this is not the case, and if it is, what further financial liability upon Wirral Council should ARMC be made aware of?

5. Conclusions

5.1 It is by now beyond dispute that the Special Charging Policy was unfair –

Several other anomalies were also identified ... – Social Services Committee (September 1999)

"*There is unfairness in the system ..."* - **[Officer C (DASS)]** (2004)

"The Group felt this (Special charging Policy) was unfair ..." – Charging Policy Review Group (2005)

"The inequity of the Charging Policy has been a concern for some time ..." – **[Officer I (DASS)] (**2006)

The Director of Law, HR and Asset Management considers the policy to have been *"unreasonable*" and therefore *"unlawful*" . at specific times

5.2 What has become a matter of dispute is whether Wirral Council dealt appropriately and effectively with this "*unfairness*".

The Report of Internal Chief Officer for ARMC on November 3rd (para 3.2 p.8) states that :

"Further discussions and enquiries were made with DASS officers and managers. All were again open, co-operative and helpful....." .

Whilst I do not believe that all DASS staff have been obstructive during Internal Audit's investigation, I strongly refute that this if this has always been the case If so why have I spent nine years fighting for justice, and why did I lose the job that I was so strongly committed to? I have witnessed senior officers lie to ARMC as they blatantly did to the Audit Commission. (I shake my head in despair every time I hear reference to*"daily living costs/funds").*

I have been constantly reminded of the proverb that I included in my original grievance/whistleblowing submission:

"If we keep up appearances we won't be found out....."

Cllr. Abbey commented at ARMC on November 3rd on the *"drip, drip ,drip"* of information that has been a feature of this sorry saga.

The *"drip, drip, drip"* has been entirely of the Council's making. I have taken several days leave from work, produced a series of reports (including this one) and provided information as requested to assist with ongoing investigations. If particular senior officers and indeed, particular Councillors had been truly "*open, co-operative and helpful*" I would not have had to get up at 4am to complete this report before I go to work.

Furthermore, I would not have lost my job, there would have been no PIDA report, no suspensions, no investigations, no special meetings, no solicitor's fees, no Compromise Agreement, no payment of £45,000 to keep quiet, no need for a gagging clause, no adverse publicity and no possibility, as there is now, of the Council bringing itself into disrepute.

Whilst this case has been a terrible waste of Council resources, the personal, negative repercussions for me and my family have been incalculable.

5.3 Wirral Council's response to this case has been to <u>minimise</u>

a) <u>financial liability</u> and b) <u>serious malpractice.</u>

I have detailed how the potential financial liability has grown exponentially from September 2008 from £0 to £243,700 as investigations have progressed.

I maintain that if I had not pressed ARMC the Council would have agreed to "take the hit" on the £78,499.62 figure detailed by Director of DASS in November 2008 and that as far as they were concerned would have been the end of the matter.

The council charged tenants of Bermuda Road, Curlew Way and Edgehill Road approximately £500K during the period 1997-2006 that I maintain was unlawful under the Special Charging Policy.

I fully understand that these are difficult financial times but that is no justification for unlawfully withholding money that is rightfully theirs from vulnerable people.

It should also be noted this is not just about the Special Charging Policy, this is about ***legitimate*** charges that were not made, which, according to my calculations, amounts to a sum well into seven figures. Again I strongly refute the previously reported claim that the loss of income amounted to £300,000 especially when I was told by Mr. Norman three weeks prior to the publication of the report presented to ARMC that the loss amounted to £580,000.

The tendency to minimise serious malpractice is reflected in the speech that Cllr. Denise Roberts gave to Committee on November 2nd 2009. Cllr.Roberts has kindly forwarded me a copy of her speech wherein she stated:

"What we are dealing with, quite frankly, is a mess that needs to be sorted out"

I would suggest that what we are actually dealing with is maladministration, financial mismanagement and an appalling abuse of power.

This tendency is also reflected in the comment that John Webb, (Director of DASS) made in his presentation to ARMC members on November 3rd 2009 about the observation made by Dame Denise Platt from the Commission of Social Care Inspection during a visit to Wirral on Mr. Webb's first day as Director. She reasoned that the Department had found themselves in special measures because "*Wirral couldn't count".*

Might I suggest on the evidence of this report that DASS should never have come out of special measures?

If there is a single piece of evidence I would ask ARMC to consider it is the following email exchange which I have already referenced within this report and which I include in it's entirety as it demonstrates so clearly the two issues I have highlighted about financial liability and serious malpractice.

[Officer D (DASS)] to [Officer K (DASS)]

19 February 2004
Subject: RE: Supported Accommodation – Charging Policy

How much money are we talking about
a. reimbursing
b. not collecting on a weekly basis.

I am further disturbed by the staff at West wirral complaining about this. can I have some more details please.

[Officer K (DASS)] to Martin Morton
19 February 2004
Subject: RE: Supported Accommodation – Charging Policy

Can you respond to the attached please.

Martin Morton to [Officer K (DASS)]and [Officer D (DASS)]

23 February 2004
Subject: RE: Supported Accommodation – Charging Policy

Information as requested:
weekly charges amount to £1031.70 (£53,648 p.a).
The amount of money involved in reimbursement back to April 2003 would be approximately 48 weeks as at the end of the week. This would amount to £49,521.60. This sum may be seen as damage limitation as technically it could be argued that reimbursement should be backdated to December 1997 which would involve much larger sums.

My understanding of the difficulties which staff encounter in West Wirral is having to manage disproportionate charges within the same service as Fellowship House tenants are charged £25 "all in" (inc. food and utilities). Whereas the rest of West Wirral are charged the above amount and pay for own food and contribute towards utility bills.

If you require further information please let me know.

Thanks,
Martin

[Officer K (DASS)] to [Officer C (DASS)]
23 February 2004
Subject: FW. Supported Accommodation – Charging Policy

What do you think?

[Officer C (DASS)] to [Officer D (DASS)]

24 February 2004
Subject: RE: Supported Accommodation – Charging Policy

Once we go for a 'reimbursement' the cover's blown. However we can't bury our head in the sand for too much longer as the charging review group will start soon (it could be better to leave it to that group to consider?) In the meantime there is 'unfairness' in the system hence my advice to X to consider the broader issues in AMT.

By the book:- there is no separate charging policy for this service, so it could be argued the domiciliary care charging policy must apply (and should have since '97), and that will mean a hefty reimbursement.

I would suggest we go to the Cabinet in the political down time (May-June) to get agreement for a 'special charging policy' for supported living as part of the budget strategy.... and that this policy maintains the status quo in financial terms but does so more fairly. I would also suggest the impact on individuals and

groups in certain living situations are considered in more depth as I was left thinking the charging practice was very diverse and almost locally determined by individual staff (although I could be wrong there).

[Officer D (DASS)] to [Officer K (DASS)]
24 February 2004
Subject: RE: Supported Accommodation – Charging Policy

[Officer K (DASS)]*, to follow on. We should maintain the current position for the moment. There will be a group set up shortly to address this and other charging issues.This will report in to Cabinet with recommendations.At that point we will stop/start charging as necessary.**With other clients who no longer have to pay charges,they are not reimbursed for charges they have paid in the past.This group will be similarly affected (nor do we demand back payment for people who were not charged in the past but who now have to pay).***

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6. Recommendation

Despite the apparent complexities of this case I would refer members back to my email sent to the Audit Commission in September 2008 (para 2.11)

"It is matter of simply adding up what charges were made upon the tenants of 3 addresses between 1997 -2006 and paying it back....."

I implore you not to be constrained by political affiliations and to make your decision in accordance with what is right and acknowledge the citizenship and legal rights of people with learning disabilities who lived at Bermuda Road, Curlew Way and Edgehill Road and who were subject to an unlawful charge.

Martin Morton

19 November 2009

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