



## Audit and Risk Management Committee

|               |  |
|---------------|--|
| <b>Date:</b>  | <b>Wednesday, 19 September 2012</b>          |
| <b>Time:</b>  | <b>6.15 pm</b>                               |
| <b>Venue:</b> | <b>Committee Room 1 - Wallasey Town Hall</b> |

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### AGENDA

**1. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members are asked to consider whether they have any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

**2. MINUTES (Pages 1 - 6)**

To receive the minutes of the meeting held on 14 June 2012.

**3. INTERNAL AUDIT UPDATE (Pages 7 - 34)**

**4. ITEMS OF NOTE ARISING FROM JUNE 2012 UPDATE (Pages 35 - 58)**

**5. DEVELOPMENT OF REPORTING OF THE CHIEF INTERNAL AUDITOR (Pages 59 - 68)**

**6. INTERNAL AUDIT COUNTER FRAUD TEAM UPDATE (Pages 69 - 76)**

**7. PRESENTATION - COUNTER FRAUD**

**8. ANNUAL AUDIT LETTER 2010/2011 (Pages 77 - 82)**

**9. AUDIT COMMISSION PROGRESS REPORT (Pages 83 - 94)**

10. **HIGHWAYS AND ENGINEERING SERVICES CONTRACT AWARD AND MANAGEMENT (Pages 95 - 118)**
11. **ANNUAL GOVERNANCE REPORT - MERSEYSIDE PENSION FUND (Pages 119 - 146)**
12. **MERSEYSIDE PENSION FUND - STATEMENT OF ACCOUNTS 2011/2012**  
  
To follow
13. **ANNUAL GOVERNANCE REPORT - WIRRAL COUNCIL (Pages 147 - 190)**
14. **STATEMENT OF ACCOUNTS 2011/2012**  
  
To follow
15. **ANNUAL GOVERNANCE STATEMENT**  
  
To follow
16. **INSURANCE FUND ANNUAL REPORT 2011/2012 (Pages 191 - 204)**
17. **CORPORATE RISK AND INSURANCE MANAGEMENT (Pages 205 - 210)**
18. **REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) (Pages 211 - 242)**
19. **ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR (PART 1)**
20. **EXEMPT INFORMATION - EXCLUSION OF MEMBERS OF THE PUBLIC**

The public may be excluded from the meeting during consideration of the following items of business on the grounds that they involve the likely disclosure of exempt information.

RECOMMENDATION – That in accordance with section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by the relevant paragraphs of Part 1 of Schedule 12A (as amended) to that Act. The public interest test has been applied and favours exclusion.

21. **ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR (PART 2)**

## AUDIT AND RISK MANAGEMENT COMMITTEE

Thursday, 14 June 2012

Present: Councillor J Crabtree (Chair)

|             |               |            |
|-------------|---------------|------------|
| Councillors | JE Green      | S Foulkes  |
|             | A Brighthouse | J Walsh    |
|             | RL Abbey      | P Hayes    |
|             | D Dodd        | D McCubbin |

Ex Officio: Councillor P Williams

### 1 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

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

Councillor Green declared his personal interest in agenda item 4 – Internal Audit Update (see minute 4 post) by virtue of him being a governor of Calday Grange Grammar School, which had been the subject of an audit which identified high priority recommendations.

No other declarations were made.

### 2 MINUTES

**Resolved – That the minutes of the meeting held on 13 March 2012, be approved.**

### 3 APPOINTMENT OF VICE-CHAIR

On a motion by Councillor R Abbey and seconded by Councillor S Foulkes, it was –

**Resolved (5:0) – That Councillor Darren Dodd be appointed Vice-Chair for the ensuing municipal year.**

### 4 INTERNAL AUDIT UPDATE

The Chief Internal Auditor reported that to assist in effective corporate governance and fulfil statutory requirements, the Internal Audit Section of the Finance Department reviewed management and service delivery arrangements within the Council as well as financial control systems. Work areas were selected for review on the basis of risks identified on the Corporate Risk Register and as assessed by Internal Audit in consultation with Chief Officers and Managers. The report provided a summary of the audit work undertaken between 1 March 2012 and 31 May 2012 and he indicated that during the period, 42 audits were undertaken, which identified 50 high priority recommendations to address risks and improve systems in operation across the Council. The audit opinion upon the effectiveness of the control environment ranged from 4\* (excellent) to 1\* (poor) and the report identified actual recommendations where the audit opinion provided was 1\*.

He provided an analysis of the high priority recommendations and commented that follow up audits were scheduled to monitor progress and ensure that the recommendations made were implemented within a satisfactory timescale. All of the action plans had been returned fully completed and all identified appropriate timescales for the implementation of recommendations agreed to mitigate or remove weaknesses. Items of note were in relation to Counter Fraud, Court of Protection, Procurement of Commissioned Care and Children in Care.

Members commented on the importance of actions being followed within agreed timescales and indicated that specific high priority audit recommendations should be widely circulated to Members of this Committee, the Cabinet and appropriate scrutiny committees, in order for effective monitoring to take place. In response to further comments in relation to the star (\*) rating system, the Chief Internal Auditor indicated that, at the time of its adoption, it had been based on CIPFA guidance and available best practice. It would always involve an element of judgement and audits were all supervised and subject to challenge. However, auditors were always researching ways to improve the system and the topic would be addressed in detail in forthcoming audit training sessions.

On a Motion by Councillor Crabtree and seconded by Councillor Abbey, it was –

**Resolved –**

- (1) That as the Internal Audit Update report has highlighted serious weaknesses in various Departments, the Audit and Risk Management Committee wishes to make sure that all recommendations for improvement are carried out: Therefore, a further report be presented on this valuable work, which can be used as an improvement tool at all levels of the Council's operations – the report to be presented also to the Improvement Board, Cabinet and relevant Scrutiny Committees.**
- (2) That a formal mechanism for monitoring progress be adopted, dictated by Internal Audit, in line with Committee cycles.**
- (3) That the Chief Internal Auditor be requested to have regard to the views expressed by Members and to submit a further report to the next meeting of the Committee upon how in future Audit recommendations, action plans and timescales will be presented to Members.**

## **5 INTERNAL AUDIT ANNUAL REPORT**

The Chief Internal Auditor presented the Internal Audit Annual Report for 2011/2012, which specified the Internal Audit assurance opinion on key areas of the Council's activity. He reported that the audits conducted during the year were in accordance with the Internal Audit Plan 2011/2012 (minute 88 (28 March 2011) refers) and were principally planned to review the financial control systems in compliance with the requirements of the Accounts and Audit Regulations. However significant attention was also paid to key risks in the following areas –

- Performance Management
- Anti Fraud and Corruption
- Corporate Governance
- Risk Management
- ICT Systems
- Service Delivery.

Members expressed concern with regard to some of the timescales for action, referred to in the Annual Report and commented that greater monitoring should be undertaken by Members periodically during the year to ensure that audit recommendations/action plans were being complied with. Members also suggested that greater emphasis should be placed on ensuring that decisions of the Council and Cabinet were being implemented.

In response, the Chief Internal Auditor commented that Internal Audit produced for each Department a monthly review that could be provided to Members, which identified areas of weakness, actions required and relevant timescales.

**Resolved – That subject to officers having regard to the views expressed by Members, the report be noted and appropriate action be taken as necessary.**

## 6 CORPORATE RISK AND INSURANCE MANAGEMENT

The Acting Chief Finance Officer reported upon progress made against the objectives for Corporate Risk and Insurance Management and anticipated developments in the coming months. He outlined progress in relation to Insurance and Risk Management and set out the key areas of responsibility for the Risk and Insurance Team. He also highlighted the main individual tasks to be undertaken during the year with target dates for completion and confirmed that regular progress reports would continue to be presented to the Committee, with updates on significant risks also presented to the Cabinet as part of the Quarterly Performance and Financial Review. He provided also a brief overview of the issues that had been identified for the next period.

Members questioned whether the Council had an effective system of risk management and expressed a view, subject to intensive training being provided, that elected Members, in addition to the Executive Team, had a role to play in relation to the review of the Corporate Risk Register, as part of the corporate performance monitoring process.

**Resolved – That, subject to officers having regard to the views expressed by Members, the Corporate Risk and Insurance Management report be noted.**

## 7 AUDIT COMMISSION - PROGRESS REPORT

The Audit Commission Audit Manager presented the report of the District Auditor, which set out progress in the delivery of responsibilities as external auditors and which highlighted key emerging national issues and developments of interest to Members. The report referred to findings in relation to the financial statements and to significant risks identified relevant to the VFM conclusion and planned audit response. Other areas of work focused upon 2010/2011 grant claims and returns (see minute 9 post) and the report outlined the Government response to consultation on the future of local public audit and the externalisation of the Audit Practice.

Other matters of interest were in relation to the Annual Fraud and Corruption Survey and National Fraud Initiative, which had identified almost £229m of fraud, overpayments and errors.

The Audit Commission Audit Manager advised the Committee that she had prepared a brief supplement in relation to the progress report national template, which had recently been released. With the agreement of the Chair and, subject to it being

published as an urgent item, the supplement was circulated for Members' consideration, rather than wait until the September meeting of the Committee. The document included a further update on outsourcing the work of the Audit Practice and on the residual Audit Commission.

Other matters of interest related to the development of UK-wide Public Sector Internal Audit Standards, the rights of local electors, the role of the NAO in local VFM studies and the publication of the CIPFA guide to Local Government Finance Reforms. The document referred also to the publication of the Audit Commission briefing paper 'Local Payment by Results', which considered potential issues arising from local authorities using PbR as a method of commissioning and paying for services. In response to questions from Members, the Deputy Director of Finance indicated that a detailed report on all of the issues set out in the progress reports, including Payment by Results, would be presented to the next meeting of the Committee.

**Resolved – That the progress report and update be noted.**

## **8 AUDIT COMMISSION PROGRESS REPORT - ACTION AREAS**

The Acting Chief Finance Officer reported that the Audit Commission Progress Report presented to each meeting of this Committee made reference to areas that Members may wish to consider. As requested by the Committee, he provided detail with regard to the action taken by the Council in respect of the following matters identified in the January/March Progress Reports –

- Auditing the 2010/2011 Accounts
- Lets be Clear: Making Local Authority IFRS Accounts More Accessible and Understandable
- Managing Workforce Costs
- Joining Up Health and Social Care
- CIPFA Prudential Code for Capital Finance
- 2011/2012 Accounts: CIPFA Guidance Notes for Practitioners

**Resolved – That the responses to the issues identified in the Audit Commission Progress Reports be noted.**

## **9 AUDIT COMMISSION - GRANT CLAIMS AND RETURNS REPORT**

Further to minute 63 (13 March 2012), the District Auditor presented a supplement to the Certification of Grant Claims and Returns Annual Report. The supplementary report summarised the outcomes of certification work for the two claims and returns that were outstanding at the time the annual report was produced. The final two claims were in respect of –

- Flood and Coastal Erosion Management
- Sure Start early years and childcare grant and Aiming High for Disabled Children grant

A qualification letter had been issued in respect of each claim and the District Auditor set out the key issues that had been raised in the letter to the Deputy Chief Executive and Director of Finance. He provided also a summary of recommendations that had arisen from the certification work and the actions that had been agreed for implementation. He presented also a summary of certification fees arising from the 2010/2011 work and highlighted reasons for any significant changes from 2009/2010.

Members expressed their concern with regard to some of the issues highlighted in the report, particularly in relation to failings associated with the Flood and Coastal Erosion Management contract.

**Resolved – That the report and agreed actions be noted.**

10 **SUMMARY OF REVIEWS UNDERTAKEN BY AUDIT COMMISSION**

The Chief Internal Auditor reported that in order to assist in effective corporate governance and fulfil statutory requirements, the Internal Audit Section of the Finance Department reviewed management and service delivery arrangements within the Council as well as financial control systems. Work areas were selected for review on the basis of risks identified on the Corporate Risk Register and as assessed by Internal Audit in consultation with Chief Officers and Managers. He presented a summary of reviews undertaken by the Audit Commission for the period of April 2011 to February 2012, and provided details of the action that Wirral Council, including Merseyside Pension Fund had subsequently taken to implement the recommendations within the associated reports.

**Resolved – That the report be noted.**

11 **SELF ASSESSMENT PROGRESS REPORT**

The Chief Internal Auditor reported that to comply with best professional practice the Audit and Risk Management Committee was required to complete an annual evaluation of its role and effectiveness as part of the systems of internal audit. The CIPFA publication 'A Toolkit for Local Authority Audit Committees' recommended the use of a self assessment checklist to achieve the task and the Chair completed the checklist and presented a report to this Committee on the findings and recommended actions (minute 67 (13 March 2012) refers).

He presented an Action Plan that had been developed following the exercise, which identified recommendations to improve the existing arrangements and address any risks. It had been updated to identify the progress made to implement the identified recommendations.

**Resolved – That the updated self assessment checklist be approved.**

12 **REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - QUARTERLY UPDATE**

The Director of Law, HR and Asset Management presented a quarterly summary of the use of covert surveillance by the Council between 17 January and 1 June 2012. The Regulation of Investigatory Powers Act 2000 (RIPA) governed how public bodies used surveillance methods and he indicated that the Council used covert surveillance for the purpose of preventing or detecting crime or preventing disorder. He outlined the key issues in relation to the operation of RIPA and commented that between 17 January 2012 and 1 June 2012 the Council granted four authorisations for directed covert surveillance.

Two authorisations were granted to obtain evidence of serious offences of fly-tipping at a site in the Borough where the offences were occurring on a regular basis, causing environmental damage and requiring costly cleanup operations. Two authorisations were granted also to obtain evidence of alleged anti-social behaviour.

In the first case, the surveillance had recorded incidents that corroborated witness evidence of alleged harassment and, in the second case, the surveillance was authorised to obtain evidence of multiple breaches of an Anti-Social Behaviour Order, which would shortly lead to the arrest of the offender.

The Protection of Freedoms Act 2012 had now been enacted and, the Director indicated that when it came into force, the following changes in the law would affect local authorities –

- Magistrate's approval would be required for local authority use of RIPA and would be in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
- Use of RIPA to authorise directed surveillance would be confined to cases where the offence under investigation carried a maximum custodial sentence of six months or more except in relation to underage sales of alcohol and tobacco, where the threshold would not apply.

The Director reported also that Ibrahim Hasan, one of the leading authorities on RIPA, would be providing on 4 September 2012, a full days training to officers on the new legislation. In addition, the Office of Surveillance Commissioners (OSC) had announced that Sir David Clarke, Assistant Surveillance Commissioner, would visit the Council on 8 June 2012 in order to conduct an inspection of the Council's use of covert surveillance.

**Resolved – That the report be noted.**

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## WIRRAL COUNCIL

### AUDIT AND RISK MANAGEMENT COMMITTEE

19 SEPTEMBER 2012

|                         |                               |
|-------------------------|-------------------------------|
| <b>SUBJECT:</b>         | <b>INTERNAL AUDIT UPDATE</b>  |
| <b>WARD/S AFFECTED:</b> | <b>ALL</b>                    |
| <b>REPORT OF:</b>       | <b>CHIEF INTERNAL AUDITOR</b> |
| <b>KEY DECISION</b>     | <b>NO</b>                     |

#### 1.0 EXECUTIVE SUMMARY

- 1.1 This report identifies and evaluates the performance of the Internal Audit Section and includes details of the actual work undertaken during the period. 1<sup>ST</sup> June to 31 August 2012. There are five items of note concerning audit work undertaken that are brought to the attention of the Members for this period and these are identified in order of risk at Section 2.6.

#### 2.0 BACKGROUND AND AUDIT OUTPUT

- 2.1. This report summarises the audit work completed during the period 1<sup>st</sup> June 2012 to 31<sup>st</sup> August 2012. The specific nature of the work that has been undertaken or is currently ongoing is identified in Appendix I. 35 audits were undertaken during this period identifying 48 high priority recommendations to address risks and improve systems in operation across the Council. Management has agreed to implement all of the recommendations made within a satisfactory timescale and follow up audits are scheduled to monitor progress. Those reports identifying high priority recommendations are analysed in more detail in section 2.6 of this report.

#### 2.3 Internal Audit Performance Indicators

- 2.3.a The Service constantly evaluates and measures the effectiveness of its performance in terms of both quality and productivity by means of a number of performance indicators in key areas as identified below. These include delivery of the annual Internal Audit Plan and ensuring that all of the audits identified in the plan are completed on schedule. This is particularly important at the present time as the requirement for Internal Audit involvement in a number of important corporate initiatives has increased dramatically.

| IA Performance Indicator  | Target (%) | Actual (%) |
|---|------------|------------|
| Delivery of Internal Audit Plan.  | 100        | 53         |
| Percentage of High priority recommendations agreed with clients.                                    | 100        | 100        |
| Percentage of returned client survey forms indicating satisfaction with the Internal Audit service. | 80         | 98         |
| Internal audit reports issued within 10 days of the completion of fieldwork.                        | 100        | 95         |

2.3.b Due to significant shortfalls in staffing resource experienced during 2011/12 and the resulting problems that this caused regarding delivery of the audit plan this situation will continue to be monitored very closely and reported to Members, the Chief Executive and the Section 151 Officer for appropriate remedial actions to be taken.

2.3.c There are currently no issues arising.

#### 2.4 Audits Identifying High Priority Recommendations

2.4.a The table at Appendix 1 identifies audits undertaken over the period which include recommendations of **a high priority nature** where a fundamental risk has been identified that might affect the ability of a specific service area to achieve it's key objectives. The table also indicates the audit opinion provided on the effectiveness of the overall control environment.

2.4.b All of the action plans in respect of the audits identified have been returned fully completed. These all identify appropriate timescales for the implementation of recommendations agreed to mitigate or remove weaknesses.

#### 2.5 Follow Up Audits

The table attached at Appendix 2 identifies the current status of those recommendations made in internal audit reports that have been followed up during the period:

#### 2.6 Items of Note

##### 2.6.a CYPD: Metro Catering Income

A review was completed of the system for the recording, collection, banking and reconciliation of income in respect of Metro Catering. This resulted in a one star opinion and eight high priority recommendations. The recommendations related to:

- The preparation of documented procedure notes for the recording, collection and banking of income.
- Comprehensive training for Metro kitchen staff in the procedures documented.
- Consistent completion of income records in the school kitchens.
- Consistency and clarity of income to banking records held at schools.
- The need for a clear format and consistent completion of documents in school kitchens and independent checking of these.
- The need for full income reconciliation both in the schools and centrally.
- Timely payment by staff for meals taken.

There has been a positive response by the Department and assurances have been provided that actions to address the recommendations are ongoing. This will be substantiated at the forthcoming follow up audit.

## 2.6.b DASS: Personal Budgets

An audit of Personal Budgets was undertaken in the Department of Adult Social Services in June 2011. Eleven recommendations were made, six of high priority and five of medium priority. The recommendations related to:

- The production of a checklist to provide evidence that the service user understands the choices and rules relating to their personal budget.
- A review of the resource allocation system so as to ensure that this is still the most appropriate.
- A review of the Indicative budget following the completion of phases 1-3.
- Review of information capture to ensure consistency.
- Review of the carers' resource allocation system on a six monthly basis.
- Review of the allocation system to ensure this is still the most appropriate system.
- Updating Members annually on the resource allocation system and any amendments made to it.
- Introduction of a feedback form monitoring system.
- Review of the funding formula used for the voluntary sector.
- Enquiries with the voluntary sector to ensure sufficient staff resources.
- Endorsement of a quarterly report presented to the Safeguarding Adult Partnership Board, and actions arising clearly minuted.

The original implementation timescales indicated that all recommendations would be implemented by April 2012. The follow up audit was commenced during June 2012, and although an assurance has been provided that one recommendation has been implemented and the remaining ten are in the process of being implemented, evidence of implementation progress has not been provided. Revised target dates for implementation have been set, of September and October 2012, representing significant slippage from the original dates indicated.

## 2.6.c CYPD: Bidston Village CE Primary School

An audit of Bidston Village CE Primary School was undertaken in December 2011. This was highlighted to this Committee in January 2012 as the audit opinion was one star and there were seventeen high priority recommendations, indicating many areas of concern. A follow up audit has now been completed which has indicated a very positive response to the recommendations, and it was pleasing to report that evidence has been provided of the implementation of all recommendations made.

## 2.6.d BIG and ISUS

An audit has been on-going since September 2011 to investigate allegations about the operation of 2 Council schemes (BIG and ISUS) which were established to assist local businesses, and involved contracts with a local company. The investigation followed the raising of serious allegations by two former employees of an organisation which was contracted to deliver these schemes. A draft report on the BIG scheme is being completed and will be

finalised after all relevant persons have been consulted. The report has been discussed with the then current Acting Chief Executive and the Chief Executive designate, and issues shared with this Committee's Chair.

The draft report on ISUS is near completion. Information to support the allegations has been provided by the complainant in many frequent e-mails, as well as at interviews. It was decided that the complainant would be notified on 20 August that no further information provided by him after his e-mail of 12 August, would be accepted or considered. He had previously been asked at a meeting on 7 March, to confirm that he had no further information to provide, which he did, but subsequently asserted that he considered he would be further contacted to assist in aspects of the investigation. He accepted the decision of 20 August and enquiries are continuing in relation to issues in his 12 e-mails sent in the period up to 12 August, which included the time when the Chief Internal Auditor, the investigator, was on leave.

The intention is to subsequently present the reports to this Committee together with any actions decided upon.

#### 2.6.e Information and Communications Technology

There are two areas of concern:

- A number of Internal Audit reports have remained at the Draft stage without Responsible Officers and implementation dates for recommendations being agreed. Reasons for the lack of progress include the complexity of systems which span more than one department or section of the Authority, and a lack of defined responsibility for systems which are developing and are not yet embedded within the Authority's management arrangements.
- There are several Information Assurance-related recommendations which currently have no defined owner, or which have not been implemented, due either to the developing nature of the Authority's Information Governance processes and procedures, or to the temporary absence of Senior Officers with Information Governance responsibilities.

Despite the lack of clarity on the status of the recommendations progress has been made in several of the risk areas identified in the audit reports. Internal Audit is reviewing the status of all outstanding and unassigned recommendations and will meet with system managers and Heads of Service to agree a way forward.

### **3.0 RELEVANT RISKS**

- 3.1 Appropriate actions are not taken by officers and Members in response to the identification of risks to the achievement of the Council's objectives.
- 3.2 Potential failure of the Audit and Risk Management Committee to comply with best professional practice and thereby not function in an efficient and effective manner.

#### **4.0 OTHER OPTIONS CONSIDERED**

4.1 No other options considered.

#### **5.0 CONSULTATION**

5.1 Members of this Committee are consulted throughout the process of delivering the Internal Audit Plan and the content of this regular routine report.

#### **6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

6.1 There are none arising from this report.

#### **7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

7.1 There are none arising from this report.

#### **8.0 LEGAL IMPLICATIONS**

8.1 There are none arising from this report.

#### **9.0 EQUALITIES IMPLICATIONS**

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality.

#### **10.0 CARBON REDUCTION IMPLICATIONS**

10.1 There are none arising from this report.

#### **11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 There are none arising from this report.

#### **12.0 RECOMMENDATIONS**

12.1 That the report be noted.

12.2 That Members instruct officers to implement outstanding recommendations identified in 2.6.b in line with the revised target dates and provide a progress report of actions taken to the next meeting of this Committee.

12.3 That Members request officers to provide a progress report of actions taken to address issues identified in 2.6.a to the next meeting of this Committee.

12.4 That Members note the issues identified in 2.6.c, d. and e.

#### **13.0 REASON FOR RECOMMENDATION**

13.1 To provide the Members with assurance that the Council is taking appropriate measures to comply with statutory requirements to provide an adequate and effective internal audit service.

13.2 To ensure that risks to the Council are managed effectively.

13.3 To ensure that the Council complies with best practice guidance identified in the CIPFA publication 'A Toolkit for Local Authority Audit Committees'.

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### **APPENDICES**

Appendix 1: Follow Up of Audit Recommendations Status

Appendix 2: Audits Identifying High Priority Recommendations

Appendix 3: Key Report Definitions

### **REFERENCE MATERIAL**

Internal Audit Plan 2012/13

### **SUBJECT HISTORY (last 3 years)**

| <b>Council Meeting</b>              | <b>Date</b>   |
|-------------------------------------|---|
| Audit and Risk Management Committee | Routine report presented to all meetings of this Committee. |

### Audits Identifying High Priority Recommendations

The following table identifies audits undertaken over the period which include recommendations of a **High priority nature** where a fundamental risk has been identified that might affect the ability of a specific service area to achieve its key objectives. The table also indicates the audit assurance opinion provided on the effectiveness of the overall control environment. A key to the assurance and recommendations ratings is provided at Appendix 3.

| Audit  | Total Recs Agreed (H) | Recs Not Agreed | Audit Opinion Provided | High Priority Recommendations  |
|--|-----------------------|-----------------|------------------------|--|
| Merseyside Pension Fund – Investments, Governance and Strategy | 2(2)                  | -               | Limited (2*)           | <p>1. Contributions should be received from all employers within the deadlines set in accordance with the Scheme Rules. The LGP41's should be checked upon receipt to ensure the correct employer/employee contribution rate has been calculated and received.</p> <p>The Pension Fund should determine the circumstances/criteria under which they intend to levy a penalty charge. Once agreed the policy should be documented and available to relevant staff for reference.</p> <p>2. To ensure the correct rate has been received it should be ensured that all employers have completed their LGP41 in full. The LGP41's should be checked upon receipt to ensure the correct employer/employee contribution rate has been calculated and received and any discrepancies identified should be followed up and the reasons for any variances should be noted on file for reference.</p> |
| Compromise Agreements  | 3(3)                  | -               | Minimal (1*)           | <p>1. The system, process and procedure for all Compromise Agreements (whether above or below the threshold for referral to the Sub-Committee of the Employment &amp; Appointments Committee), should be documented. This should include:</p>  |

|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  |  | <ul style="list-style-type: none"><li>• The purpose and background to Compromise Agreements, including guidance on the evidential, litigation and commercial risk evaluations to be undertaken throughout a case;</li><li>• The Officers responsible for negotiating and agreeing Compromise Agreements within Law, Human Resources &amp; Asset Management and Legal Services, and their respective roles &amp; responsibilities;</li><li>• The approval process for approving Compromise Agreements;</li><li>• The requirements for reporting, including the distribution list, the frequency of reporting and the information to be reported.</li></ul> <p><b>2. The Sub-Committee should be formed as approved by Cabinet.</b></p> <p>The following steps should be included in the new approval process:</p> <ul style="list-style-type: none"><li>• The need for pre-approval to offer a Compromise Agreement by a Sub-Committee of the Employment &amp; Appointments Committee;</li><li>• Procedures for convening the Sub-Committee as quickly as possible, consistent with the requirements of the Council's Constitution and Access to Information Rules, so that approval can be sought, and changes approved quickly, should these occur. This may be particularly important when timescales are tight, for example when Judicial Mediation is used at an Employment Tribunal, and attendees from the Council are expected to have authority to agree the Terms &amp; Conditions of agreements quickly as part of the Judicial Mediation process;</li><li>• As an alternative to forming and re-forming the Sub-Committee of the Employment &amp; Appointments Committee should Terms &amp; Conditions change, Officers may seek delegated approval to amend less significant Terms &amp; Conditions in Compromise Agreements. Financial and non-financial parameters within which pre-approval</li></ul> |
|--|--|--|--|--|



|                                      |      |   |              |   |
|--------------------------------------|------|---|--------------|---|
|                                      |      |   |              | <p>can be delegated to HR/ Legal Services senior Officers, should be agreed. This delegation should be to nominated senior Officers only;</p> <ul style="list-style-type: none"> <li>• The need for re-approval by the Sub-Committee should the 'final' negotiated Compromise Agreement be outside the pre-authorised parameters;</li> <li>• The timetable for completion and its introduction.</li> </ul> <p><b>3.</b> Officers from HR should clarify the requirement of the Employment and Appointments Committee to have all COT3 agreements reported but not compromise agreements.</p>  |
| Risk Management – Finance Department | 3(2) | - | Limited (2*) | <p><b>1.</b> More consistent evidence is required to capture the discussions undertaken regarding:</p> <ul style="list-style-type: none"> <li>• Risks raised,</li> <li>• Risk amended or deleted.</li> </ul> <p>As part of the wider programme of improvements to the authority's Risk Management Framework and Processes. For example, documentation supporting the changes made to the Finance Departmental Risk Register should be referenced (and hyperlinked) to the DMT minutes.</p> <p><b>2.</b> The department should liaise with Legal and Democratic Services (in preparation of for the review of the Partnership Framework and Toolkit and the Partnership Register). So as to link and begin the process of assessing risks with all influential organisations/partners.</p> <p>Linked to this, it must be ensured that an up to date Register of third party access to Wirral Council ICT facilities is maintained.</p> |

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| <p>Completion of Contracts</p> | <p>2(2)</p> | <p>-</p> | <p>Limited<br/>(2*)</p> | <p>1. A robust procedure should be implemented (which is to be led by Corporate Procurement, utilising the Corporate Procurement Board where appropriate) to ensure that all formal tender exercises (whether they are led by Corporate Procurement or by a departmental officer) are promptly progressed to completion with a formal contract being drawn up and signed/sealed accordingly.</p> <p>It may be possible to utilise 'The Chest' to help ensure: all details required for formulating the contract are submitted as a matter of course and a clear audit trail exists confirming what details have been sent, by whom and when.</p> <p>It must be ensured that Corporate Procurement liaise with the lead/appropriate officer for the following two contracts:</p> <ul style="list-style-type: none"> <li>▪ Financial Leasing Services</li> <li>▪ Variable Message Signs</li> </ul> <p>and it is ensured that a formal contract is completed through Legal and Member Services for each, as a matter of urgency.</p> <p>2. It should be ensured that the Contracts Register is an accurate reflection and contains details of all appropriate contracts; including those highlighted within the Finding (5.3.2):</p> <ul style="list-style-type: none"> <li>- Transport to Swimming Baths</li> <li>- Supply, Installation and Maintenance of Multi-Functional Devices, Photocopiers and Desk Top Printers</li> <li>- Frozen Food – Distribution and Supply</li> <li>- Free Loft and Cavity Insulation Programme for Wirral</li> </ul> <p>(Please note the previous recommendation, as at 5.2.3: to ensure that a contract is completed for all appropriate tendering exercises and all details required for formulating the contract are submitted as a matter of course. Hence such information could be utilised in compiling the Contracts Register)</p> <p>It must also be decided in cases where a contract has been let via</p> |
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|                            |        |   |              | an external framework, whether details of the contract are required by Legal and Member Services (this may also be required in relation to collaborative contracts for which the Authority is not the lead and hence has not drawn up the contract).  |
| The Observatory School     | 9(3)   | - | Limited (2*) | <ol style="list-style-type: none"> <li>1. The petty cash system should include a separation of duties. An independent check of the petty cash should take place and be evidenced with a signature and a date.</li> <li>2. The non order system should be used for utilities only.</li> <li>3. The M44 staff absence returns should be reviewed and authorised by another member of staff authorised to do so before being sent to EAT.</li> </ol>   |
| DASS – Court of Protection | 17(13) | - | Minimal (1*) | <ol style="list-style-type: none"> <li>1. The Director of the Department of Adult Social Services should establish and carry out all appropriate responsibilities as the designated Court of Protection Deputy. This should include processes for receiving ongoing assurance that the administration of Court of Protection cases are being carried out effectively. A decision should also be made and agreed as to whether the Director should authorise expenditure of clients' monies.</li> <li>2. A review of how Court of Protection cases should be managed should be carried out and formalised. Roles and responsibilities of the Financial Protection Team and those of social care should be clarified, agreed and documented to ensure that all processes are carried out efficiently and effectively.</li> <li>3. The Service Manager (Self-Directed Support) should establish a process for monitoring Court of Protection clients to ensure that all clients are made subject to regular visits and that the minimum two reviews each year are carried out, documented and kept on file. Action should be taken where non-compliance is identified.</li> <li>4. i) Assurances should be obtained that all items that were previously held in the storage boxes agree to the respective clients' inventory.</li> </ol> |

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|  |  |  |  | <p>ii) All items retrieved from client's properties should be stored securely in the locked room with access restricted to appropriate members of staff only.</p> <p><b>5. i)</b> Where possible, all cash recovered during a Protection of Property search should be counted by both officers at the location. If this is not possible, the use of protective sealed bags should be considered to ensure that cash can be counted back in the office.</p> <p>ii) Separation of duties should be in place between:</p> <ul style="list-style-type: none"><li>- Retrieving cash and items from a Protection of Property visit and recording the details in the safe contents book.</li><li>- Banking cash and verification of banking.</li></ul> <p><b>6. i)</b> Clients' monies recovered from Protection of Property visits should not be used as a method of payment for any purpose that does not comply with the Court of Protection or Office of the Public Guardian procedures.</p> <p>ii) A policy decision on whether the assessment of capacity charge should be levied against the client or the Council should be made and agreed. If the Department of Adult Social Services continues to charge clients for the assessment, it should be determined whether this should be agreed and detailed in the schedule of charges for the Department.</p> <p><b>7.</b> Corporate Procurement should be consulted as to whether a preferred supplier list could be established of firms available for house clearance that represent value for money whilst meeting any other specific need (e.g. houses that may need to be cleared and cleaned immediately). If a preferred supplier list cannot be compiled due to compliance with procurement requirements, it should be ensured that three quotes are obtained on each occasion where practical.</p> <p><b>8.</b> A procedure should be developed and implemented for</p> |
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|  |  |  |  | <p>controlling access to online bank accounts during periods of staff absence.</p> <p><b>9.</b> Independent and prompt reconciliations of bank statements should be carried out for all Court of Protection clients. Each Financial Protection Officer should only reconcile bank statements of clients managed by another Officer. All reconciliations should be signed and dated as evidence of when it was carried out and by whom. As an additional check, a manager should carry out a number of random spot check reconciliations each month.</p> <p><b>10.</b> Comprehensive, documented procedures should be compiled and formally agreed for all systems and processes carried out by the Financial Protection Team for managing Court of Protection clients. The procedures should be made subject to annual reviews or immediately upon any changes made by the Court of Protection or the Office of the Public Guardian.</p> <p><b>11.</b> A process should be established to ensure that the justification and reasons for payments made on behalf of clients – including new standing orders or direct debits - are reviewed, authorised by a manager and documented for probity.</p> <p><b>12.</b> A procedure for verifying that purchases made on behalf of clients have been received should be introduced. The procedure should take into account the type and value of items that have been purchased in determining whether verification checks are required.</p> <p><b>13.</b> All care homes should be required to submit personal allowance expenditure reports on a periodic basis for each client detailing how monies were spent and evidence that that the client has received the monies / items declared. Reports should be reviewed to ensure that:</p> <ul style="list-style-type: none"><li>i) Expenditure is appropriate for the client;</li><li>ii) Action on any suspicious activity is taken; and</li><li>iii) The amount of personal allowance to be paid is adjusted</li></ul> |
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|                        |      |   |              | <p>promptly, where appropriate.</p> <p>Where personal allowance is taken to the care home, procedures should ensure that it is signed for by the client on the compliments slip, if they have the capacity. If this is not possible, the receipt of the personal allowance should be evidenced on the periodic expenditure report received from the care home.</p> <p>This item is reported in more detail elsewhere on the agenda.</p>   |
| Equality and Diversity | 3(2) | - | Limited (2*) | <p>1. A consistent and accurate data capture system is required to ensure that all Officers and Members throughout the authority are trained up in Equality and Diversity. In the meantime it would be prudent to consider focusing on:</p> <p>a) Managers and Councillors that have not been trained up because these individuals should:-</p> <ul style="list-style-type: none"> <li>• Be leading by example.</li> <li>• Effectively embedding Equality and Diversity into Wirral Councils culture.</li> </ul> <p>b) Staff identified as having a 'Protected Characteristic'.</p> <p>c) Staff who do not have access to computers e.g. Managers at team brief to communicate with their staff on their preferred methods and times available for training. This should then be communicated to the relevant Senior Officers who should then proactively project manage (schedule) the training out across the authority. Officers who are scheduling the training must also consider merging groups from Departments together rather than dealing with one department at a time (saves time, money and also gives Officers the opportunity to meet other colleagues from other areas of the organisation).</p> <p>2. In order to embed and fully comply with the Equality Duty 2010</p> |

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|                 |      |   |               | <p>the Council needs to:-</p> <ul style="list-style-type: none"> <li>• Ensure that a significantly high level Manager chairs the Corporate Equality Group meetings.</li> <li>• A Cabinet Portfolio Holder is allocated responsibility for the Corporate Equality Scheme.</li> <li>• Continue to proactively share and evidence working practices with other authorities, organisations and working groups.</li> </ul>  |
| Case Management | 2(2) | - | Limited<br>2* | <p>1. Steps should continue to be taken to ensure the Casework System is fully operational as soon as possible, without detriment to the robustness of the system and the data/information which it contains. The proposed Employee Relations Report should then be produced and reported at the earliest opportunity (and subsequently on an ongoing basis).</p> <ul style="list-style-type: none"> <li>• It should also be ensured that Members are informed, at the next opportunity, of the delay to the system becoming fully operational (due to them having been informed in March 2012 that the system would go fully live in April 2012).</li> </ul> <p>2. In relation to the Casework System (particularly prior to the system going fully 'live') the following should be considered and a decision taken to ensure:</p> <ul style="list-style-type: none"> <li>• Appropriate separation of duties/system access levels are in place: for example, the same person is not enabled to enter a Case and then subsequently delete and/or close a Case.</li> <li>• Staff awareness is raised in terms of the system, its purpose, and what constitutes a 'Case' (and hence which procedures/policy will apply). This may be achieved by including an 'overview of the system' via the intranet.</li> <li>• A process is formalised, and included within system procedures, of the requirement to declare an interest in a case should one exist.</li> <li>• Monitoring and evaluation of the Casework System continues</li> </ul> |

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|                                  |              |          |                     | <p>to be undertaken and also for a period after the system has gone fully 'live', in order to assess the system's performance with any problems identified being rectified within a reasonable time period (a process for system users to feedback during this period may be beneficial). This will also need to include a review of the accuracy of the information which is relied upon, and fed in to the system, from ResourceLink and any problems that may have arisen.</p> <ul style="list-style-type: none"> <li>All remaining 'Designated Users' of the Casework System who have yet to attend a training session, receive the appropriate training in using the system (it is acknowledged that one member of staff is currently on maternity leave and will require training upon her return).</li> </ul>  |
| <p>CYPD - Emergency Payments</p> | <p>9 (7)</p> | <p>-</p> | <p>Minimal (1*)</p> | <p>1. The review of the petty cash procedures should be completed and procedures should be updated to reflect the current system in place. The procedures should include Head of Branch approval and guidelines on the goods and services that can be purchased, including the rule that cash payments should only be issued in exceptional circumstances as detailed in Section 17 of the Children's Act of 1989.</p> <p>2. A receipt should be obtained and held on file for the total value of the payment issued. If a receipt has not been obtained the reason should be documented appropriately.</p> <p>3. i) All PB11A forms should be authorised and dated before a payment is issued.<br/>         ii) HOB documents should be completed appropriately including the name of the approving Head of Branch.<br/>         iii) The procedures should be updated to include the level above which a HOB should be obtained. All localities should adhere to the correct procedure for HOB approval. See 5.2.<br/>         iv) Access, alteration and approval of the HOB document should be limited to authorised staff.</p> |



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|                   |       |   |               | <p>4. The parent/carer should sign and date the PB11A form to confirm a payment has been received.</p> <p>5. Emergency cash payments should be monitored and action taken as appropriate Evidence of monitoring should be held on file to confirm. Consideration should be given to allocating a separate code for emergency cash payments.</p> <p>6. Cash should be held in a safe which is locked when not in use. Access should be limited to authorised staff. Consideration should be given to reducing the number of staff authorised to issue payments.</p> <p>7. The Planning and Resources Branch should liaise with the Accountancy Section to discuss updating the annual petty cash return document to ensure that it includes the requirement to record the bank balance. Furthermore, the £272.72 interest identified as the variance for one locality should be clarified as to what action should be taken.</p> <p>The discrepancy highlighted on the petty cash return for one locality should be investigated and resolved. Internal audit should be informed of the outcome.</p> <p>This item is reported elsewhere on the agenda.</p> |
| Contract Register | 2 (1) | - | Limited<br>2* | The outstanding retentions must be researched, monies released where possible and annotated within the Contract Register. For the retentions that the Council can not release, reasons must be documented within the register and approved by senior management.  |
| Wallasey School   | 13(5) | - | Limited<br>2* | 1. The request for staff and Governors to complete a Business and Pecuniary form should be recorded in the minutes. Once  |

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|                          |       |   |               | <p>completed, forms should be readily available for reference.</p> <p><b>2.</b> The interim arrangements for payroll should be approved by Full Governing Body.</p> <p><b>3.</b> The Financial Procedures Manual should be updated to reflect the interim payroll arrangements in place.</p> <p>If the school decides to bring the payroll arrangements in house, the procedures should be updated to reflect this. The following should be included in the procedures:</p> <p>(i) action to be undertaken in the event of errors occurring prior to payment of payroll</p> <p>(ii) independent checking of payroll input</p> <p>Once updated, the procedures should be presented to the Full Governing Body for approval.</p> <p><b>4.</b> The Authorised Signatory List should be updated to reflect the current position at the school. Once updated, approval should be sought from the Full Governing Body.</p> <p><b>5.</b> A standard authorised form must be utilised for every change to the establishment list.</p> <p>A record of transfer of original documents to the payroll provider should also be maintained.</p> |
| Town Lane Infants School | 11(4) | - | Limited<br>2* | <p><b>1.</b> The Financial Procedures Manual should be updated to include the following:</p> <p>i) Data recovery procedures. The procedures should state the CARS system of data management is in operation at the school</p>  |

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|  |  |  |  | <p>(which is the responsibility of the LA).</p> <p>ii) Written procedural notes clearly defining duties and responsibilities of staff involved in the event of an incident leading to an insurance claim.</p> <p>iii) The duties and responsibilities of staff involved in the payroll system including checking the monthly returns to the payroll provider.</p> <p><b>2.</b> The non order system should be used for utilities only eg. gas and electricity.</p> <p><b>3.</b> The Charge Policy should be reviewed and updated to include all charges made by the school, including lettings. The basis of the charge for lettings should be documented. The Charge Policy should be reviewed and approved periodically by the Governing Body and evidenced in the minutes.</p> <p><b>4.</b> The record maintained of payments received for school meals should include the following details:</p> <ul style="list-style-type: none"><li>• The date payment is received.</li><li>• The period covered by the payment received.</li><li>• The daily total number of meals purchased.</li></ul> |
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| Liscard Primary School | 8(2) | - | Limited<br>2* | <p>1. An official order must be raised for all purchases with the exception of utilities, such as gas and electricity.</p> <p>2. i) The £65.20 income banked but not credited to the school's budget should be reported to the Governing Body for retrospective write-off.</p> <p>ii) All income banked should be reconciled back to the budget tabulations to ensure that the school's budget has been credited correctly. Any discrepancies should be reported to Accountancy Section promptly to ensure that immediate remedial action can be taken.</p> |
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## FOLLOW UP OF AUDIT RECOMMENDATIONS – STATUS






| Audit name                                    | Follow-up date | Opinion     | Recommendations |     |     | RAG Status           |
|---|----------------|-------------|-----------------|-----|-----|----------------------|
|   |                |             | High            | Med | Low |                      |
| CIVICA DIP System - Access Controls           | 08/12          | Substantial | 1               | 4   | 1   | All Implemented<br>G |
| Sundry Debtor Refunds                         | 07/12          | Substantial | 1               | 1   | 0   | All Implemented<br>G |
| Debtors On Line – Technical Services          | 07/12          | Limited     | 5               | 4   | 0   | All Implemented<br>G |
| Merseyside Pension Fund: Benefits and Payroll | 06/12          | High        | 0               | 1   | 1   | Implemented<br>G     |

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| Members ICT Governance | 07/12 | Limited | 0 | 5 | 2 | <p>2 Medium risk and 2 low risk recommendations implemented last financial year. 3 Medium risk recommendations followed up 1 has been implemented and 2 remain outstanding.</p> <p>1) "A paper should be presented to Cabinet for approval that:</p> <ul style="list-style-type: none"> <li>- The Head of Legal and Democratic Services is owner of the Code of Practice, and has responsibility for ensuring it up to date, remains relevant and continues to provide best practice guidance in the use of ICT.</li> <li>- The Head of IT Services should provide technical advice and guidance to the Head of Legal and Democratic Services in the production and review of the Code, to ensure it is in line with the Council's ICT Security Policy.</li> <li>- The Code of Practice for use of ICT by Members should be reviewed on at least an annual basis, in line with the review of the ICT Security Policy, and updated where necessary by Officers."</li> </ul> <p>2) "The CoP should be amended to state that, in the event of a Member resigning, access to systems should cease immediately, and equipment should be returned as soon as practicable."</p> <p style="text-align: center;"><b>A</b></p> |
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| HR SelfServe  | 07/12 | Limited | 1  | 1 | 2 | <p>1 Low risk recommendation actioned last Financial year.</p> <p>1 High risk recommendation followed up by email on 26/03/2012, 18/05/2012 and 13/07/12 and to be discussed with Head of ITS on 4th September 2012.</p> <p>1 Low risk recommendation followed up by email on 13/07/12 – not yet actioned.</p> <p>1 Medium risk not due for action until 31/08/2012.</p> <p><b>A</b></p> |
| Bidston Village CE Primary School                                 | 07/12 | Minimal | 17 | 0 | 0 | <p>All Implemented</p> <p><b>G</b></p>   |
| CQC Improvement Plan  | 07/12 | Limited | 2  | 0 | 0 | <p>All Implemented</p> <p><b>G</b></p>   |
| The Priory Parish CE Primary School: General Financial Procedures | 07/12 | Limited | 4  | 2 | 0 | <p>1 High Risk and 2 Medium Risk recommendations have been implemented.</p> <p>3 High risk recommendations are outstanding but in the process of being implemented. A full review of the FPM is expected to be completed in October 2012</p> <p><b>A</b></p>   |

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| Irby Primary School                   | 07/12 | Substantial | 2  | 6 | 1 | All Implemented<br>   |
| Youth Service Bank Accounts           | 07/12 | Minimal     | 12 | 7 | 0 | 5 High and 3 Medium recommendations have been implemented. 7 High Risk and 4 Medium Risk recommendations are in the process of being implemented. A new target date has been set for end of November 2012<br> |
| DASS: Personal Budgets                | 07/12 | Minimal     | 6  | 5 | 0 | An area of concern as there has been slippage on all original implementation dates.<br>   |
| Caldy Grange Grammar School           | 08/12 | Minimal     | 6  | 2 | 0 | Awaiting evidence of implementation.<br>   |
| St Werburgh's Catholic Primary School | 08/12 | Substantial | 3  | 4 | 0 | All Implemented<br>   |
| Townfield Primary School              | 08/12 | High        | 0  | 2 | 0 | All Implemented<br>   |



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| Ganneys Meadow Early Years Centre                         | 08/12 | Limited     | 5 | 3 | 0 | 5 High Risk and 3 Medium Risk recommendations are in the process of being implemented. A new target date has been set for end of September 2012<br>                         |
| St Peters CE Primary Heswall, Payroll and Personnel       | 08/12 | Substantial | 2 | 4 | 0 | All Implemented<br>   |
| Corporate Contracts                                       | 08/12 | Limited     | 1 | 0 | 0 | Largely implemented, issue of regular examination of maverick spend remains, resource issue here, ongoing audit input via planned work and Corporate Procurement Board.<br> |
| DASS: Procurement Of Commissioned Care                    | 08/12 | Limited     | 5 | 1 | 0 | All implemented with the exception of one high recommendation which is in progress. To be kept under review, overall satisfactory position.<br>                           |
| Pension Admin and Pensioner Payroll system implementation | 08/12 | Substantial | 0 | 2 | 0 | All Implemented.<br>  |

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| Removable Media Compliance Check -            | 08/12 | Limited     | 1 | 0 | 0 | No action to date. Although a number of work-streams are in progress which will improve Information Assurance, the SMART Action Plan recommended in this audit report has not yet been produced and as such there are no clear milestones or documented success measures for the management of Information Assurance risks.<br><b>R</b> |
| Freedom of Information                        | 08/12 | Substantial | 1 | 1 | 0 | Medium risk recommendation outstanding - to be followed up end of November 2012<br><b>A</b>   |
| Non-staff access to Wirral ICT infrastructure | 08/12 | Limited     | 3 | 1 | 0 | 2 High risk recommendations not due for 2nd follow up until 31/08/12<br><br>1 Medium risk recommendation not due for 2nd follow up until 31/08/12.<br><br>1 High risk recommendation outstanding, but work in progress.<br><b>A</b>   |
| Mobile Phone Usage                            | 03/12 | Minimal     | 5 | 2 | 0 | All outstanding - awaiting meeting with responsible officers.<br><b>R</b>   |

## KEY REPORT DEFINITIONS:

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| <b>Assurance Opinion</b> |
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| <b>HIGH (****)</b>       | There is a sound system of control designed to achieve the system objectives and these are being consistently applied. No High recommendations made.   |
| <b>SUBSTANTIAL (***)</b> | Whilst there is a basically sound system there are weaknesses which put some of the control objectives at risk and/or there is evidence that the level of non compliance with some controls may put the system objectives at risk. No High recommendations made. |
| <b>LIMITED (**)</b>      | Weaknesses in the system of control are such as to put the system objectives at risk and/or the level of non compliance puts the system objectives at risk.  |
| <b>MINIMAL (*)</b>       | Control is generally weak leaving the system open to significant error or abuse, and/or significant non compliance with basic controls leaves the system open to error or abuse.   |

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| <b>RAG Status</b> |
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| <b>G</b> | - | <b>Audits</b>     | Actions agreed and implemented.  |
|          |   | <b>Follow Ups</b> | Actions implemented.   |
| <b>A</b> | - | <b>Audits</b>     | Actions agreed and officers committed to implement within agreed timescale.            |
|          |   | <b>Follow Ups</b> | Actions in process of being implemented within agreed timescale with some implemented. |
| <b>R</b> | - | <b>Audits</b>     | Actions agreed   |
|          |   | <b>Follow Up</b>  | Little or no progress made to implement actions within agreed timescale.               |

**Recommendation Priority Rating**

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| <b>HIGH</b>   | Matters that are <b>fundamental and material</b> to the system of internal control for the area under review. We believe that matters observed might cause a system objective not to be met or leave a risk unmitigated and need to be addressed as a matter of urgency.   |
| <b>MEDIUM</b> | Matters that are significant to the system of internal control under review but do not require immediate action. A system objective may still be met in full or in part or a risk adequately mitigated but the weakness represents a significant deficiency in the system. |
| <b>LOW</b>    | Matters that require attention and would improve the overall control levels for the area under review but are not vital to the overall system of internal control.   |

## WIRRAL COUNCIL

### AUDIT AND RISK MANAGEMENT COMMITTEE

19 SEPTEMBER 2012

|                         |   |
|-------------------------|---|
| <b>SUBJECT:</b>         | <b>“ITEMS OF NOTE” IN CHIEF INTERNAL AUDITOR REPORT TO AUDIT &amp; RISK MANAGEMENT, JUNE 2012</b> |
| <b>WARD/S AFFECTED:</b> | <b>ALL</b>  |
| <b>REPORT OF:</b>       | <b>CHIEF INTERNAL AUDITOR</b>   |
|                         |   |
| <b>KEY DECISION ?</b>   | <b>NO</b>   |

#### **1.0 EXECUTIVE SUMMARY**

- 1.1 The Chief Internal Auditor’s report to Audit and Risk Management Committee (ARMC) in June 2012 identified 25 High Priority recommendations following audits of the control environment in 3 important Council systems.
- 1.2 ARMC resolved (Resolution 4.1) that a further report should be presented to this Committee, the Improvement Board, Cabinet and relevant Scrutiny Committees on the 3 set out in paragraph 2.1.

#### **2.0 BACKGROUND**

- 2.1 As part of the Internal Audit Plan for 2012/13, audits were conducted to evaluate the effectiveness of controls in :

2.1.a Department of Adult Social Services (DASS)

- Court of Protection (COP) Appendix 1
- Procurement of Commissioned Care Appendix 2

2.1.b Children and Young Persons Department (CYPD)

- Children In Need Emergency Payments Appendix 3

### **3.0 FINDINGS**

#### **3.1 Court of Protection (COP)**

3.1.a The Director of Adult Social Services has responsibility delegated from COP for the management of the finances of an adult who lacks the capacity to manage their own affairs and has no other person to assist.

3.1.b An audit was conducted to provide assurance that the Department has adequate controls in place to provide effective management and stewardship, fulfilling the requirements of the Court. The audit included evaluation of the following:

- The procedure for making application to the Court and the payment of the associated GP fee;
- Documentation of the responsibilities of the Department in fulfilling its legal role, including how different services in the Department work together;
- A review of record keeping and of reporting to the Court;
- Procedures for “protection of property” visits, sale of property and for safekeeping of client’s belongings and valuables;
- The procedure for making payments and purchases on the client’s behalf;
- The system for referrals when additional social care needs become apparent.

3.1.c A report was subsequently produced for the Director that assesses the control environment as poor (1\*) and identifies 13 high priority recommendations and four medium priority recommendations covering the following areas:

- A lack of any documented procedures or consistent way of working, so that there is no assurance that the requirements of the Office of the Public Guardian (the government body who oversees such cases) are being met;
- A lack of adequate control over the clients' bank accounts held and the payments made;
- Potential care implications of closing the case to social workers once COP status is assigned.

3.1.d All audit reports incorporate a plan of required actions to address weaknesses identified. The Directors response to this report was very positive, and a number of urgent actions have already been taken to address the weaknesses identified by the audit. The Summary Recommendations document attached at Appendix 1 records the responses and actions taken to date by the department.

#### **3.2 Procurement of Commissioned Care**

3.2.a This is the system whereby assessed care is allocated to valid approved care providers, and the lists of identified providers are regularly monitored by DASS .

- 3.2.b The audit undertaken focussed upon the compilation and update of lists of Care Providers, the responsibilities within the decision-making process in allocating care packages, and ongoing liaison and monitoring of the quality of care provided. The exercise also involved testing a sample of payments, contracts, and monitoring frameworks.
- 3.2.c The audit report included the opinion of the control environment as adequate (2\*) and 5 high priority recommendations were made which related to:
- Utilising risk assessment methodology to inform care home visits.
  - Reviewing financial codes currently utilized.
  - Retaining clear records of reasons for utilizing specific providers for domiciliary care services.
- 3.2.d The Directors response to this report was very positive, and a number of urgent actions have already been taken to address the weaknesses identified by the audit. The Summary Recommendations document attached at Appendix 2 records the responses and actions taken to date by the department.
- 3.3 Children in Need Emergency Payments
- 3.3.a This is the system in operation within CYPD for utilising the petty cash system to provide cash payments to children (parents/guardian) in exceptional circumstances. This service is provided in law under Section 17 of the Children Act 1989.
- 3.3.b An audit was undertaken to review the controls over the system and compliance with legislation was being managed effectively.
- 3.3.c An audit report was prepared for the Director which provided a poor (1\*) opinion on the effectiveness of the control environment and identified 7 high priority recommendations, one medium and one low priority recommendation covering the following areas:
- The review and update of documented procedure notes and the dissemination of these amongst all locality offices;
  - Procedures for obtaining receipts for all purchases;
  - Procedures for approval of the payments via the PB11a form;
  - Confirmation of receipt of payment by the parent/guardian;
  - Monitoring of cash payments made and actions taken;
  - Controlling access to the safe;
  - The investigation of discrepancies on petty cash returns;
- 3.3.d The Directors response to this report was very positive, and all necessary actions agreed to address weaknesses identified by the audit. The Summary Recommendations document attached at Appendix 3 records the responses and actions taken to date by the department.

#### **4.0 FOLLOW UP**

- 4.1 To comply with current best practice every internal audit report is routinely followed up to evaluate the progress made by management to address identified weaknesses and a report prepared for the relevant Chief Officer on the findings. The precise timing of this work is determined by the nature and significance of the findings and the agreed timescale for implementation, this work is however always conducted within six months of the original audit report being presented to management.
- 4.2 Follow up work for these audits is scheduled for September 2012 to evaluate the progress made by management to address these important issues and test where appropriate the operation of those controls that have been implemented. An update on the findings of this work and an indication of how the overall control environment has been strengthened will be provided to the Board if required.

#### **5.0 RELEVANT RISKS**

- 5.1 Appropriate actions are not taken by officers and Members in response to the identification of risks to the achievement of the Council's objectives.
- 5.2 Potential failure of the Audit and Risk Management Committee to comply with best professional practice and thereby not function in an efficient and effective manner.

#### **6.0 OTHER OPTIONS CONSIDERED**

- 6.1 No other options considered.

#### **7.0 CONSULTATION**

- 7.1 Members of this Committee are consulted throughout the process of delivering the Internal Audit Plan and the content of this regular routine report.

#### **8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

- 8.1 There are none arising from this report.

#### **9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

- 9.1 There are none arising from this report.

#### **10.0 LEGAL IMPLICATIONS**

- 10.1 There are none arising from this report.

#### **11.0 EQUALITIES IMPLICATIONS**

- 11.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality.



**12.0 CARBON REDUCTION IMPLICATIONS**

12.1 There are none arising from this report.

**13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

13.1 There are none arising from this report.

**14.0 RECOMMENDATIONS**

14.1 That the report be noted.

14.2 Members take any appropriate action deemed necessary in response to issues raised.

**15.0 REASONS FOR RECOMMENDATIONS**

15.1 To provide Officers and the Members with assurance that the Council is taking appropriate measures to ensure that risks to the Council are managed effectively.

15.2 To provide Officers and the Members with assurance that the Council is taking appropriate measures to comply with statutory requirements to provide an adequate and effective internal audit service.

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**APPENDICES**

- Appendix 1: Court of Protection - Summary of Recommendations
- Appendix 2: Procurement of Commissioned Care - Summary of Recommendations
- Appendix 3: Children in Need - Summary of Recommendations

**REFERENCE MATERIAL**

Internal Audit Plan 2012/13

**REFERENCE MATERIAL**

Internal Audit Plan 2012/13

**SUBJECT HISTORY (last 3 years)**

| Council Meeting                     | Date      |
|-------------------------------------|-----------|
| Audit and Risk Management Committee | June 2012 |

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| Rep Ref | Recommendation   | Priority Level | Clients comments   | Implementation Timescale |
|---------|--|----------------|--|--------------------------|
| 5.2     | <p>The Director of the Department of Adult Social Services should establish and carry out all appropriate responsibilities as the designated Court of Protection Deputy. This should include processes for receiving ongoing assurance that the administration of Court of Protection cases are being carried out effectively. A decision should also be made and agreed as to whether the Director should authorise expenditure of clients' monies.</p> | High           | <p>Guidance has been sought from the Court in relation to any restriction to the Director's power to delegate actions or to any financial limits for which the Director should authorise. A further meeting will be arranged with the Director following advice from the court. The Director will specify the involvement he will wish to take and this will be documented within the procedures and followed in full by the team.</p> <p>A report will be provided to the Director on all Court of Protection cases managed by the Department, the information contained in the report and the frequency to be further determined by the Director.</p>                      | 1 September 2012         |
| 5.3     | <p>A review of how Court of Protection cases should be managed should be carried out and formalised. Roles and responsibilities of the Financial Protection Team and those of social care should be clarified, agreed and documented to ensure that all processes are carried out efficiently and effectively.</p>   | High           | <p>Meetings have already taken place with Principal Managers from Access and Assessment branch and Finance. The roles and responsibilities of Care Managers and the Financial Protection Team have been documented and are in draft form. These have been shared with the group for further comment/recommendation. The Department is exploring the possibility of a collaborative review process incorporating finance and care management for all clients for whom the Department is acting as deputy. Further consideration is required on whether Social Work involvement should remain open in cases which are complex in order that decisions can be made quickly.</p> | 1 November 2012          |

| Rep Ref | Recommendation  | Priority Level | Clients comments   | Implementation Timescale  |
|---------|---|----------------|--|---|
| 5.4     | Each Court of Protection application should be checked and authorised by a manager prior to being submitted. The manager should ensure that the information stated is correct and, where applicable, can be substantiated by other supporting information / documentation.  | Medium         | <p>All forms completed by a Financial Protection Officer will be checked by a manager and the team has been informed of this instruction to take place with immediate effect.</p> <p>This will be included in the review of the procedures and formally documented.</p>  | <p>Implemented</p> <p>(Subject to verification by Internal Audit)</p> |
| 5.5     | The Service Manager (Self-Directed Support) should establish a process for monitoring Court of Protection clients to ensure that all clients are made subject to regular visits and that the minimum two reviews each year are carried out, documented and kept on file. Action should be taken where non-compliance is identified. | High           | <p>Schedule of visits is to be drawn up to coincide with the date that the order is granted.</p> <p>The manager will be responsible for ensuring that the schedule is adhered to and that any issues that arise as a result of the visit are documented and kept on the client file.</p>   | 1 November 2012   |
| 5.6     | The Court of Protection referral form should be appropriately updated to ensure that the rationale for referring a client as a Court of Protection case is clear.   | Medium         | <p>The referral form will be updated and will contain information and advice to care management staff detailing appropriate referrals.</p> <p>This will be included in the revised Court of Protection procedures and circulated to staff.</p> <p>A training programme will be developed with assistance from legal representatives and included within the departmental training programme.</p> | 1 September 2012  |

| Rep Ref | Recommendation   | Priority Level | Clients comments  | Implementation Timescale  |
|---------|--|----------------|---|---|
| 5.7     | <p>i) Assurances should be obtained that all items that were previously held in the storage boxes agree to the respective clients' inventory.</p> <p>ii) All items retrieved from client's properties should be stored securely in the locked room with access restricted to appropriate members of staff only.</p>  | High           | <p>A locked room is now available to the team and all items are securely stored.</p> <p>A review has been completed by the Department and the team can provide assurance that all items agreed to the clients inventories.</p>  | <p>Implemented</p> <p>(Subject to verification by Internal Audit)</p> |
| 5.8     | <p>A Protection of Property inventory pro-forma template should be developed, taken to each property and used to formally record all items and valuables. This should be signed by both members of staff prior to leaving. Each officer should have a copy to refer to when the final version is typed up and signing to reaffirm that that it represents a true record.</p>   | Medium         | <p>The pro-forma will be developed and used to formally record all items in the property and will be signed on site by both members of staff. This will be included in the revised procedures.</p>  | 1 September 2012  |
| 5.9     | <p>i) Where possible, all cash recovered during a Protection of Property search should be counted by both officers at the location. If this is not possible, the use of protective sealed bags should be considered to ensure that cash can be counted back in the office.</p> <p>ii) Separation of duties should be in place between:</p> <ul style="list-style-type: none"> <li>- Retrieving cash and items from a Protection of Property visit and recording the details in the safe contents book.</li> <li>- Banking cash and verification of banking.</li> </ul> | High           | <p>All cash recovered during a Protection of Property visit will (where possible) be counted on site. Where this is not possible due to the environment, protective sealable bags have been ordered and cash will be placed inside until it can be counted back in the office.</p> <p>Cash recovered will be counted in the office and will then be verified by an independent officer who was not present at the protection visit.</p> <p>Cash banked will be verified by an independent officer who will check that the amount banked matches the amount taken from the property.</p> | 1 August 2012   |

| Rep Ref | Recommendation   | Priority Level | Clients comments   | Implementation Timescale  |
|---------|--|----------------|--|---|
| 5.10    | <p>i) Clients' monies recovered from Protection of Property visits should not be used as a method of payment for any purpose that does not comply with the Court of Protection or Office of the Public Guardian procedures.</p> <p>ii) A policy decision on whether the assessment of capacity charge should be levied against the client or the Council should be made and agreed. If the Department of Adult Social Services continues to charge clients for the assessment, it should be determined whether this should be agreed and detailed in the schedule of charges for the Department.</p> | High           | <p>Monies recovered from a protection of property visit will not be used for any purpose until the Court order has been obtained.</p> <p>This will be included in the revised procedure.</p> | <p>Implemented</p> <p>(Subject to verification by Internal Audit)</p> |
| 5.11    | <p>Corporate Procurement should be consulted as to whether a preferred supplier list could be established of firms available for house clearance that represent value for money whilst meeting any other specific need (e.g. houses that may need to be cleared and cleaned immediately). If a preferred supplier list cannot be compiled due to compliance with procurement requirements, it should be ensured that three quotes are obtained on each occasion where practical.</p>   | High           | <p>A meeting to be arranged with corporate procurement to progress this issue.</p>   | <p>1 September 2012</p>   |
| 5.12    | <p>A procedure should be developed and implemented for controlling access to online bank accounts during periods of staff absence.</p>   | High           | <p>A meeting has been arranged with HSBC bank (18<sup>th</sup> July 2012) in order to progress this issue.</p>   | <p>1 September 2012</p>   |

| Rep Ref | Recommendation  | Priority Level | Clients comments   | Implementation Timescale  |
|---------|---|----------------|--|---|
| 5.13    | Independent and prompt reconciliations of bank statements should be carried out for all Court of Protection clients. Each Financial Protection Officer should only reconcile bank statements of clients managed by another Officer. All reconciliations should be signed and dated as evidence of when it was carried out and by whom. As an additional check, a manager should carry out a number of random spot check reconciliations each month. | High           | <p>Staff have been instructed that they should not be reconciling the bank statements of their own clients. This instruction took place with immediate effect.</p> <p>The managers will carry out independent checks on a monthly basis.</p> | <p>Implemented</p> <p>(Subject to verification by Internal Audit)</p> |
| 5.14    | Comprehensive, documented procedures should be compiled and formally agreed for all systems and processes carried out by the Financial Protection Team for managing Court of Protection clients. The procedures should be made subject to annual reviews or immediately upon any changes made by the Court of Protection or the Office of the Public Guardian.  | High           | A full re-write of procedures is underway. The procedure, once agreed will be reviewed on an annual basis.   | 1 November 2012   |
| 5.15    | A process should be established to ensure that the justification and reasons for payments made on behalf of clients – including new standing orders or direct debits - are reviewed, authorised by a manager and documented for probity.  | High           | A payment request slip is to be produced and included within the new procedure. All payments, standing orders and direct debits will be authorised by a manager on the request slip and shall be maintained on the client file.              | 1 September 2012  |

| Rep Ref | Recommendation  | Priority Level | Clients comments  | Implementation Timescale  |
|---------|---|----------------|---|---|
| 5.16    | A procedure for verifying that purchases made on behalf of clients have been received should be introduced. The procedure should take into account the type and value of items that have been purchased in determining whether verification checks are required.  | High           | The manager of the home will be required to verify that any purchases have been received by the client. Items will be checked during the annual review visit to ensure that they are being used for the sole benefit of the client.   | 1 September 2012  |
| 5.17    | <p>All care homes should be required to submit personal allowance expenditure reports on a periodic basis for each client detailing how monies were spent and evidence that that the client has received the monies / items declared. Reports should be reviewed to ensure that:</p> <ul style="list-style-type: none"> <li>i) Expenditure is appropriate for the client;</li> <li>ii) Action on any suspicious activity is taken; and</li> <li>iii) The amount of personal allowance to be paid is adjusted promptly, where appropriate.</li> </ul> <p>Where personal allowance is taken to the care home, procedures should ensure that it is signed for by the client on the compliments slip, if they have the capacity. If this is not possible, the receipt of the personal allowance should be evidenced on the periodic expenditure report received from the care home.</p> | High           | <p>A full re-write of procedures is underway. The procedure, once agreed will be reviewed on an annual basis. Records in relation to the use of personal allowance will be checked at the annual review visit and documented. The Principal Officer will further consider how timely monitoring of personal allowance spending will be carried out to ensure care homes have not accumulated excessive unspent monies. Quality Assurance Officers routinely check records as part of their monitoring inspections of homes by means of section 9 of our new monitoring framework which links to Outcome 26 of Regulation 20 of CQC's Essential Standards Any concerns raised and/or suspicions that monies have been diverted away from the client will be raised as a safeguarding concern. Where the amount of pocket money is adjusted, this will be verified by the manager at all times and a copy of the justification will be retained on the client file.</p> | <p>Implemented</p> <p>(Subject to verification by Internal Audit)</p> |



|      |   |        |  |                  |
|------|---|--------|--|------------------|
|      |   |        | Further consideration needs to be given around monies being physically taken to the care home. Bacs payments would be the preferred method of payment as the team should not be a money delivery service. This will be reviewed and included within the rewrite of the procedures. |                  |
| 5.18 | All large payments that are to be made from client's accounts should be reported to the Office of the Public Guardian prior to being reported. Clarification on what constitutes a large payment should be ascertained from the Office of the Public Guardian so as to ensure compliance. | Medium | The Court has been asked to define 'large payments' and action will be taken depending on the response received by the Department. This will be included in the revised procedures.  | 1 September 2012 |

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## DASS: Procurement of Commissioned Care – Summary of Recommendations &amp; Client Response

| Rep Ref | Recommendation  | Priority Level | Clients Comments  | Implementation Timescale   |
|---------|---|----------------|---|--|
| 5.2.3   | A risk assessment methodology should be devised for visits to Care Homes and Care Providers which should incorporate regular liaison with the Care Quality Commission.  | High           | Each Quality Assurance officer has been allocated 30 homes/providers and a risk assessment process is being used to define order of proactive monitoring visits i.e. based on most recent CQC report; no of safeguarding referrals; no of complaints<br>To be written into QA policy documentation. | Implemented<br>03 July 2012<br><br>Verified by IA                                      |
| 5.3.3   | <p>The sub analysis codes and charges to the DASS budgets should be reviewed to ensure charges are coded correctly. It may also be prudent to devise codes which identify provider expenditure for transparency and governance purposes e.g. devise budgetary codes that separate accredited and non accredited Providers.</p> <p>Staff who have miscoded the expenditure should be identified and provided with the relevant budgetary code training.</p> <p>Evidence must be provided to ensure that the discrepancies identified during this audit review have been rectified by the relevant Finance Officer.</p> | High           | These miscoding will be picked up by Management Accounts Team who will validate and identify  | Implemented<br>03 July 2012<br><br>(Partial implementation verified on 21 August 2012) |

| Rep Ref | Recommendation  | Priority Level | Clients Comments  | Implementation Timescale                          |
|---------|---|----------------|---|---|
| 5.4.3   | <p>Management should research the results identified in Appendix C which annotates the eight discrepancies identified in the Provider list testing.</p> <p>Management should also communicate these additions etc to the Procurement team so that they have a full up to date picture of the Provider System (in order that they can work effectively for the DASS team).</p>   | Medium         | Already been done. For example, correct list sent to corporate procurement and brokerage                      | Implemented<br>Verified by IA                     |
| 5.5.3   | <p>The Provider Rota's and the provider Tracker forms which evidence why the provider was selected e.g.</p> <ul style="list-style-type: none"> <li>• The Provider has been used previously.</li> <li>• The Provider has been requested by the Client.</li> <li>• Selected as per Provider Rota/lowest rate.</li> </ul> <p>should be kept electronically on the ESCR system and annotated on the Brokerage Teams Data Base (in order that Management Reports can be generated accordingly). These controls will provide the Local Authority with sufficient evidence to why a specific provider had been selected.</p> | High           | Brokerage team record rationale for choice of provider using a tracker form that stays on that person's file. | Implemented<br>03 July 2012<br><br>Verified by IA |

| Rep Ref | Recommendation   | Priority Level | Clients Comments   | Implementation Timescale                          |
|---------|--|----------------|--|---|
| 5.6.3   | There needs to be formalised links with other local Authorities to provide satisfactory assurance that the service provided to the client is up to standard e.g. a passport arrangement between Local Authorities. | High           | Contracts team check with CQC and "host" local authority prior to a placement being made before making recommendations to social workers whether a provider can be used. | Implemented<br>03 July 2012<br><br>Verified by IA |
| 5.7.3   | Clearly evidenced links with the Care Quality Commission should be maintained in the event of any problems surrounding the service delivered by the Provider.  | High           | Contracts team notify CQC of any issues with a provider with Wirral funded regardless of whether they have signed our contract or not                                    | Implemented<br>03 July 2012<br><br>Verified by IA |

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CYPD: Children in Need Emergency Payments – Summary of Recommendations & Client Response

| Rep Ref | Recommendation  | Priority Level | Client Comments   | Implementation Timescale |
|---------|---|----------------|---|--------------------------|
| 5.2     | <p>The review of the petty cash procedures should be completed and procedures should be updated to reflect the current system in place. The procedures should include Head of Branch approval and guidelines on the goods and services that can be purchased, including the rule that cash payments should only be issued in exceptional circumstances as detailed in Section 17 of the Children’s Act of 1989.</p> <p>Once the procedures have been updated and approved, all relevant staff at all of the localities should be made aware of the procedures which should be complied with at all times.</p> | High           | <p>A short life working group is to be established in order to work through the updates required to the procedure, August 2012.</p> <p>Recommendations from the Group are to be put to the Social Care Branch Management Team in September 2012 for agreement.</p> <p>The updated procedure is to be re-issued and supported via staff briefing sessions, October 2012.</p>   | November 2012            |
| 5.3     | <p>The PB11A forms should be completed appropriately including the ICS number allocated to the child, before a payment is approved and issued.</p>  | Medium         | <p>The requirements for completing PB11’s in full are to be restated to Operational Support Staff and Social Workers, August 2012.</p> <p>The requirement to complete PB11’s correctly will be part of the review of the Procedure to be agreed by the Social Care Branch Management Team, September 2012.</p> <p>The requirement to complete PB11’s will be included in the updated procedure to be re-issued and supported via staff briefing sessions, October 2012.</p> | November 2012            |

| Rep Ref | Recommendation   | Priority Level | Client Comments   | Implementation Timescale |
|---------|--|----------------|---|--------------------------|
| 5.4     | A receipt should be obtained and held on file for the total value of the payment issued. If a receipt has not been obtained the reason should be documented appropriately.   | High           | <p>The requirement to produce receipts is to be restated to Operational Support Staff and Social Workers, August 2012.</p> <p>The requirement to produce receipts will be part of the review of the Procedure to be agreed by the Social Care Branch Management Team, September 2012.</p> <p>The requirement to produce receipts will be included in the updated procedure to be re-issued and supported via staff briefing sessions, October 2012.</p> | November 2012            |
| 5.5     | The authorised signatory list should be updated to include the members of staff permitted to authorise PB11A forms and petty cash payments. The documented procedures should reflect the details on the updated authorised signatory list. | Low            | Authorised signatory lists are to be updated in order to include authorisation for signing PB11's and use of petty cash. This will form part of the updated procedures to be briefed to staff in October 2012.  | November 2012            |



| Rep Ref | Recommendation  | Priority Level | Client Comments   | Implementation Timescale |
|---------|---|----------------|---|--------------------------|
| 5.6     | <ul style="list-style-type: none"> <li>i) All PB11A forms should be authorised and dated before a payment is issued.</li> <li>ii) HOB documents should be completed appropriately including the name of the approving Head of Branch.</li> <li>iii) The procedures should be updated to include the level above which a HOB should be obtained. All localities should adhere to the correct procedure for HOB approval. See 5.2.</li> <li>iv) Access, alteration and approval of the HOB document should be limited to authorised staff.</li> </ul> | High           | <p>The requirements for completing PB11's and HOB's in full are to be restated to Operational Support Staff and Social Workers, August 2012.</p> <p>The requirement to complete PB11's and HOBs correctly will be part of the review of the Procedure to be agreed by the Social Care Branch Management Team, September 2012.</p> <p>These requirements are to be included in the updated procedure to be re-issued and supported via staff briefing sessions, October 2012.</p> <p>The use of a revised HOB Form with write protection to be explored and developed, September 2012.</p> | November 2012            |

| Rep Ref | Recommendation   | Priority Level | Client Comments   | Implementation Timescale |
|---------|--|----------------|---|--------------------------|
| 5.7     | The parent/carer should sign and date the PB11A form to confirm a payment has been received. | High           | <p>The requirements for parents and carers to sign and date PB11's to confirm receipt of payment is to be restated to Operational Support Staff and Social Workers, August 2012.</p> <p>The requirement for parents and carers to sign and date PB11's to confirm receipt of payment will be part of the review of the Procedure to be agreed by the Social Care Branch Management Team, September 2012.</p> <p>These requirements are to be included in the updated procedure to be re-issued and supported via staff briefing sessions, October 2012.</p> | November 2012            |

| Rep Ref | Recommendation   | Priority Level | Client Comments  | Implementation Timescale |
|---------|--|----------------|--|--------------------------|
| 5.8     | <p>Emergency cash payments should be monitored and action taken as appropriate Evidence of monitoring should be held on file to confirm.</p> <p>Consideration should be given to allocating a separate code for emergency cash payments.</p>   | High           | Emergency Cash Payments will be monitored by the Budget Holders and Children's Services Finance Section and held on File, September 2012.  | November 2012            |
| 5.9     | <p>Cash should be held in a safe which is locked when not in use. Access should be limited to authorised staff.</p> <p>Consideration should be given to reducing the number of staff authorised to issue payments.</p>   | High           | A safe is be purchased in order that cash is secured in the office, July 2012.   | July 2012                |
| 5.10    | <p>The Planning and Resources Branch should liaise with the Accountancy Section to discuss updating the annual petty cash return document to ensure that it includes the requirement to record the bank balance.</p> <p>Furthermore, the £272.72 interest identified as the variance for one locality should be clarified as to what action should be taken.</p> <p>The discrepancy highlighted on the petty cash return for one locality should be investigated and resolved. Internal audit should be informed of the outcome.</p> | High           | The Children's Services Finance Section will liaise with accountancy to ensure that discrepancies found in imprest bank accounts are resolved and that interest is not paid on accounts, September 2012. | November 2012            |

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## WIRRAL COUNCIL

### AUDIT AND RISK MANAGEMENT COMMITTEE

19 SEPTEMBER 2012

|                         |  |
|-------------------------|--|
| <b>SUBJECT:</b>         | <b>DEVELOPMENT OF REPORTING OF CHIEF INTERNAL AUDITOR TO AUDIT &amp; RISK MANAGEMENT COMMITTEE</b> |
| <b>WARD/S AFFECTED:</b> | <b>ALL</b>   |
| <b>REPORT OF:</b>       | <b>CHIEF INTERNAL AUDITOR</b>  |
|                         |  |
| <b>KEY DECISION ?</b>   | <b>NO</b>  |

#### 1.0 EXECUTIVE SUMMARY

- 1.1 Following discussion with Members of this Committee regarding the format and content of internal audit reports to the Audit and Risk Management Committee (ARMC) a number of changes to the existing system have been discussed with the Chair and are detailed in this report.
- 1.2 Members are requested to approve the proposed changes.

#### 2.0 BACKGROUND

- 2.1 In accordance with best professional practice and the changing requirements of respective Chairs and Members of this Committee the format and content of Internal Audit reports to the Audit and Risk Management Committee has been radically changed and developed on a number of occasions over the years.
- 2.2 At the meeting of this Committee in June 2012, discussion took place with the Members to further improve the current reporting arrangements in an attempt to provide opportunities for Members of the Committee to engage more with officers regarding issues raised in internal audit reports and any actions taken by them to address these issues.

#### 3.0 PROPOSED CHANGES

- 3.1 Following discussion with the Chair and the relevant party spokespersons in order to allow Members to engage more with internal auditors and officers regarding issues identified in audit reports. The proposed changes are:
  - The introduction of a monthly Internal Audit Activity Summary for Members of this Committee that will identify work undertaken by internal audit for the period and include an assurance opinion provided on the control environment and detail the actions required that are high priority (see Appendix 1).

- The introduction of a colour coded RAG assessment to identify the outcome of the audit and the status of the actions required.
- Monthly emailing of this Summary report to Members of this Committee.
- Streamlining the routine Internal Audit Update Report to reduce the volume of data reported to Members and avoid any duplication of information.

3.5 Following further discussion at the meeting of this Committee in June 2012 regarding the assurance opinions provided in internal audit reports detailed research and consultation has taken place with CIPFA, the CIIA and other public bodies. Internal Audit reports have been changed so that:

- A RAG colour coded rating of assurance is included in all audit reports to replace the formerly provided opinion.
- A high level of assurance will only be provided when no high priority recommendations are provided.

A breakdown of the assurance opinion categories is provided on page 3 of Appendix 1.

#### **4.0 RELEVANT RISKS**

- 4.1 Appropriate actions are not taken by officers and Members in response to the identification of risks to the achievement of the Council's objectives.
- 4.2 Potential failure of the Audit and Risk Management Committee to comply with best professional practice and thereby not function in an efficient and effective manner.

#### **5.0 OTHER OPTIONS CONSIDERED**

- 5.1 No other options considered.

#### **6.0 CONSULTATION**

- 6.1 Members of this Committee are consulted throughout the process of delivering the Internal Audit Plan and the content of this regular routine report.

#### **7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

- 7.1 There are none arising from this report.

#### **8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

- 8.1 There are none arising from this report.

#### **9.0 LEGAL IMPLICATIONS**

- 9.1 There are none arising from this report.

**10.0 EQUALITIES IMPLICATIONS**

10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No, because there is no relevance to equality.

**11.0 CARBON REDUCTION IMPLICATIONS**

11.1 There are none arising from this report.

**12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

12.1 There are none arising from this report.

**13.0 RECOMMENDATION**

13.1 That the proposed changes to the Internal Audit reporting mechanism as described in Paragraph 3, be approved.

**14.0 REASON FOR RECOMMENDATION**

14.1 To provide Officers and the Members with assurance that the Council is taking appropriate measures to ensure that risks to the Council are managed effectively.

14.2 To provide Officers and the Members with assurance that the Council is taking appropriate measures to comply with statutory requirements to provide an adequate and effective internal audit service.

**REPORT AUTHOR:** David A Garry / Mark P Niblock  
Chief/Deputy Chief Internal Auditor  
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**APPENDICES**

Internal Audit Summary for ARMC Members

**REFERENCE MATERIAL**

Internal Audit Plan 2012/13

**REFERENCE MATERIAL**

Internal Audit Plan 2012/13

**SUBJECT HISTORY (last 3 years)**

| Council Meeting                     | Date      |
|-------------------------------------|-----------|
| Audit and Risk Management Committee | June 2012 |

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**KEY:**

**Assurance Opinion**

|                    |  |
|--------------------|--|
| <b>HIGH</b>        | There is a sound system of control designed to achieve the system objectives and these are being consistently applied. No High recommendations made.   |
| <b>SUBSTANTIAL</b> | Whilst there is a basically sound system there are weaknesses which put some of the control objectives at risk and/or there is evidence that the level of non compliance with some controls may put the system objectives at risk. No High recommendations made. |
| <b>LIMITED</b>     | Weaknesses in the system of control are such as to put the system objectives at risk and/or the level of non compliance puts the system objectives at risk.  |
| <b>MINIMAL</b>     | Control is generally weak leaving the system open to significant error or abuse, and/or significant non compliance with basic controls leaves the system open to error or abuse.   |

**RAG Status**

|          |   |                   |  |
|----------|---|-------------------|--|
| <b>G</b> | - | <b>Audits</b>     | Actions agreed and implemented.  |
|          |   | <b>Follow Ups</b> | Actions implemented.   |
| <b>A</b> | - | <b>Audits</b>     | Actions agreed and officers committed to implement within agreed timescale.            |
|          |   | <b>Follow Ups</b> | Actions in process of being implemented within agreed timescale with some implemented. |
| <b>R</b> | - | <b>Audits</b>     | Actions agreed   |
|          |   | <b>Follow Up</b>  | Little or no progress made to implement actions within agreed timescale.               |

**Recommendation Priority Rating**

|               |  |
|---------------|--|
| <b>HIGH</b>   | Matters that are <b>fundamental and material</b> to the system of internal control for the area under review. We believe that matters observed might cause a system objective not to be met or leave a risk unmitigated and need to be addressed as a matter of urgency.   |
| <b>MEDIUM</b> | Matters that are significant to the system of internal control under review but do not require immediate action. A system objective may still be met in full or in part or a risk adequately mitigated but the weakness represents a significant deficiency in the system. |
| <b>LOW</b>    | Matters that require attention and would improve the overall control levels for the area under review but are not vital to the overall system of internal control.   |

**DRAFT INTERNAL AUDIT ACTIVITY SUMMARY FOR ARMC MEMBERS**

**MONTH:** .....

**QUESTIONS/ISSUES RAISED BY MEMBERS**

| Question/Issue To Be Raised | Audit | Auditor/Client Response | Action Date |
|-----------------------------|-------|-------------------------|-------------|
|                             |       |                         |             |
|                             |       |                         |             |
|                             |       |                         |             |
|                             |       |                         |             |

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## WIRRAL COUNCIL

### AUDIT & RISK MANAGEMENT COMMITTEE

19 SEPTEMBER 2012

|                        |   |
|------------------------|---|
| <b>SUBJECT</b>         | <b>INTERNAL AUDIT COUNTER FRAUD TEAM UPDATE</b> |
| <b>WARD/S AFFECTED</b> | <b>ALL</b>                                      |
| <b>REPORT OF</b>       | <b>CHIEF INTERNAL AUDITOR</b>                   |
| <b>KEY DECISION</b>    | <b>NO</b>                                       |

#### 1.0 EXECUTIVE SUMMARY

1.1 To update Members on the activities of the Counter Fraud Team within Internal Audit. The report covers the year 2011/12 and the first half of the 2012/13 financial year to date. Although the Counter Fraud Team works closely and collaboratively with the Fraud Investigation Team within Revenues and Benefits, this report does not include the extensive activities of the benefits fraud team which are reported to Members separately.

#### 2.0 BACKGROUND AND KEY ISSUES

2.1 The remit of the counter fraud team of 2 people is to:

- prepare relevant best practice policies and procedures;
- change the culture of the organisation by raising awareness amongst the workforce to fraud and corruption and through targeted training.
- proactively manage the risk of fraud to the Council through targeted audits in high risk areas.

Also included within this remit is the investigation of any serious financial frauds perpetrated against the Council and subsequent reporting to senior management.

#### 3.0 COUNTER-FRAUD ACTIVITIES UNDERTAKEN

##### 3.1 ACTIVITIES PRIOR TO 2011/12

3.1.1 Following the establishment of the Counter Fraud Team in 2010/11, a number of activities, initiatives and policy introductions were completed in the team's first year of operation.

3.1.2 The Anti Fraud Policy was updated and approved by Cabinet on 15 April 2010. This reflected a zero tolerance approach to fraud and included areas of fraud prevention, deterrence, detection, investigation and sanctions.

3.1.3 Members of the team successfully completed the CIPFA Certificate in Investigative Practice. This qualification provides a thorough grounding in the legal and other frameworks associated with undertaking investigations as well

as equipping Officers with advanced interviewing techniques such as cognitive interviewing.

3.1.4 Five significant investigations were conducted during 2010/11 resulting from referrals from Chief Officers and Members. These investigations absorbed a considerable proportion of the team's available resource and led to a proportion of the team's planned work for the 2010/11 year being re-prioritised and carried into 2011/12. A further 6 such investigations were undertaken in 2011/12 and 7 in 2012/13 to date.

3.1.5 The establishment of Wirral Council's Counter Fraud Team was featured by the Audit Commission in the October 2010 edition of its annual publication on fraud, "Protecting the Public Purse," as an example of impressive work from which the Commission recommended others to learn.

## **3.2 ACTIVITIES IN 2011/12 AND 2012/13 TO DATE**

3.2.1 During 2011/12 and the year to date the development of the Counter Fraud Team continued with significant progress being made in a number of key areas in accordance with the team's remit:

### **Prepare relevant best practice policies and procedures**

- The Anti- Money Laundering Policy was updated and approved by Cabinet on 2 June 2011.
- The Anti-Bribery Policy was produced and approved by Cabinet on 2 June 2011.

### **Change the culture of the organisation by raising awareness amongst the workforce to fraud and corruption and through targeted training**

- Fraud Awareness Training has been developed and introduced as an on-line training package and promoted to Officers throughout the Council. Uptake of the training began in September 2011 and, to date, the training has been undertaken by 2,354 Council Officers. This represents 48% of the non-school workforce of the Council. The training has been promoted via the Council intranet and direct emailing of staff by the Chief Executive supported by publicity in One Brief. The Council's Learning and Development team are currently working with the Counter Fraud Team to identify those Officers who are yet to take the training in order that they can be contacted individually to encourage them to take up the training with the aim of increasing the rate of uptake towards 100%.
- An in-house anti-money laundering training package has been developed and delivered to a specifically targeted audience of 345 Officers in 28 separate sessions. Officers attending were selected by reference to the importance of knowledge of money laundering for their



particular areas of work e.g. one stop shop staff handling cash, cashiers, council tax and benefits staff, accountancy.

- A dedicated fraud reporting hotline-0151 666 3990-has been set up with an answering service, monitored regularly, on which members of the public or staff can leave messages to report suspected frauds.
- A dedicated counter-fraud email address-counterfraud@wirral.gov.uk- has been set up and advertised on the intranet for Council Officers to report suspected frauds. This will subsequently be extended to the public.

**Proactively manage the risk of fraud to the Council through targeted audits in high risk areas.**

- The Counter Fraud Team has conducted a number of audits, reviews and investigations, both planned and in response to requests from Chief Officers or Members and as a result of whistleblowing allegations. These are set out below-
  - Tender procedures checklist-Alterations to Pensby Park
  - Tender procedures checklist-Transport service
  - Tender procedures checklist-Town Link Viaduct
  - Care Home Investigation
  - Investigation-Partner Organisation
  - Review of Car Hire Arrangements
  - Advertising Hoardings
  - Payroll testing using data matching
  - Car Mileage
  - Members Expenses
  - Corporate credit cards
  - Overseas travel
  - Travel and subsistence
  - Investigation-whistleblowing allegations
  - Mobile phones
  - Taxis
  - Investigation-staff grievance
  - Investigation-publishing invoice fraud
  - Compromise Agreements
  - Investigation-leisure centres
  - Investigation-staff overpayment
- In addition to the above the Counter Fraud Team provides advice to departmental officers investigating suspected frauds and irregularities in cases where these are investigated within the department. The last year has seen an increasing number of referrals from Departments as the team has become more widely known to management of the Council.

- Outcomes from individual audits and investigations are reported to Members through the quarterly Internal Audit update reports and the Annual Internal Audit Report. Set out below are outcomes from recent investigations:
  - Fraud involving fictitious invoices for advertising: members of the Counter Fraud Team have worked closely with Cheshire Police in relation to the activities of fraudsters invoicing authority schools for advertising in fictitious publications. A member of the team provided a witness statement based on the team's investigation of the matter and attended Court during the trial as a result of which the perpetrators were imprisoned for 3 years for the fraud against schools in Wirral and other authorities and organisations nationally.
  - Corporate Credit Cards: this review resulted in a number of recommendations for better control and review of expenditure, the cancellation of under-used cards and the cancellation of a card and subsequent further management investigation in a case of apparent inappropriate use.

### **Data Gathering**

- A fraud database has been established to collate details of all reported fraudulent activity across the Council, whether investigated by the Counter Fraud Team or by the relevant department. Chief Officers have been reminded of the requirement that all suspected or proven fraudulent or corrupt activity should be reported to the Counter Fraud Team within Internal Audit as required by Financial Regulations.
- The Counter Fraud Team:
  - Oversees and co-ordinates the Council's participation in the Audit Commission's biennial National Fraud Initiative (NFI). This is a national exercise in using data matching audit techniques. Council-wide data sets covering a wide range of financial and non-financial applications are uploaded to the Audit Commission, which matches the data both with Wirral Council data and with data from other authorities, public bodies and other sources in order to detect potential fraudulent and erroneous transactions. The NFI exercise has resulted in significant savings to the Council, arising largely from payments recovered or stopped. The most frequently detected fraudulent and erroneous transactions are in relation to council tax, housing benefit and deceased pensioners. Exercises have been initiated to identify common themes and recurring types of fraud and error to identify lessons learned and actions being taken to reduce their incidence. The results of the latest exercise in 2011 have recently been reviewed and action taken in respect of potential frauds and errors identified. To date fraud and error amounting to £395,000 has been identified, of which £344,000 is deemed to be recoverable and in the process of being recovered.

- Co-ordinates the annual reporting of frauds perpetrated against the Council to the Audit Commission via the Commission's AF70 reporting requirement. This lists all frauds involving sums greater than £10,000 or involving employees. The bulk of the frauds reported are those handled by the Fraud Investigation Team within Revenues and Benefits which is a separate team from the Counter Fraud Team within Internal Audit.
- Completes the Audit Commission's Annual Fraud Survey on behalf of the Council. This lists all frauds irrespective of amount and also responds to survey questions dealing with anti fraud policies, procedures and controls.
- An exercise has begun to benchmark the activities of the counter fraud team against those of other authorities and the results will be reported to Members at a later date.

#### **4. DEVELOPMENT OF THE COUNTER FRAUD TEAM**

- 4.1 During the last quarter of 2011/12 both members of the Counter Fraud Team left the Authority, one person on maternity leave until January 2013 and another to take up a post elsewhere. Since January 2012 these posts have been covered by the appointment of experienced temporary agency staff one of whom is qualified as an Accredited Counter Fraud Manager and Accredited Counter Fraud Specialist and one who is a qualified Accountant with extensive local authority internal audit experience. These staff have completed the 2011/12 plan for the team, assisted in formulating the 2012/13 work plan and continued the pro-active development of the anti fraud agenda in accordance with the team's terms of reference as well as responding to allegations of fraud when they arise. The team is currently engaged in work on investigations as well as undertaking audit work in areas at risk of fraud from the Audit Plan including proactive anti fraud initiatives.

#### **5.0 RELEVANT RISKS**

- 5.1 That fraud is not properly addressed and investigated and appropriate actions taken to prosecute perpetrators, recover losses and improve financial controls.

#### **6.0 OTHER OPTIONS CONSIDERED**

- 6.1 No other options considered

#### **7.0 CONSULTATION**

- 7.1 Members of this Committee are consulted on matters relating to Internal Audit including the development of the Internal Audit Plan and the creation and activities of the Counter Fraud Team.

## **8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

8.1 There are none arising from this report.

## **9.0 RESOURCE IMPLICATIONS**

|  |          |
|--|----------|
| Amounts in the process of recovery following the annual NFI exercise                 | £344,000 |
| Amount invoiced and being recovered following investigation of a payroll overpayment | £18,431  |

## **10.0 LEGAL IMPLICATIONS**

10.1 There are none arising from this report.

## **11.0 EQUALITIES IMPLICATIONS**

11.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality.

## **12.0 CARBON REDUCTION IMPLICATIONS**

12.1 There are none arising from this report.

## **13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

13.1 There are none arising from this report.

## **14.0 RECOMMENDATIONS**

14.1 That the report be noted.

14.2 Members take any appropriate action deemed necessary in response to issues raised.

## **15.0 REASON FOR RECOMMENDATIONS**

15.1 To provide Members with assurance that the Council is taking appropriate action to address the risk of fraud and that suspected frauds are investigated and appropriate actions taken to prosecute perpetrators, recover losses and improve financial controls.

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## REFERENCE MATERIAL / SUBJECT HISTORY

| <b>Council Meeting</b>                              | <b>Date</b>       |
|---|-------------------|
| <b>Audit and Risk Management Committee</b>          |                   |
| Report of the Chief Internal Auditor-Managing Fraud | 18 January 2010   |
| Report of the Director of Finance-Fraud Prevention  | 28 September 2011 |
| Internal Audit Updates                              | Various           |

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14 August 2012

Members of Wirral Council  
Wallasey Town Hall  
Brighton Street  
Wallasey  
Wirral  
CH44 8ED

**Direct line** 0844 798 7043

**Email** m-thomas@audit-  
commission.gov.uk

Dear Councillor

## **Wirral Council - Annual Audit Letter 2010/11**

I am pleased to submit my Annual Audit Letter for your attention. It summarises the audit work for my 2010/11 audit of Wirral Council, including the Merseyside Pension Fund.

### **Public interest report**

This letter has been delayed pending the findings from my consideration of a number of issues raised with me by a group of whistleblowers regarding the award and contract management of the Council's Highways and Engineering Services (HES) contract. Members will be aware that I have recently reported my findings in a public interest report. Section 8 of the Audit Commission Act 1998 (the Act) allows me to issue such a report where a matter comes to my notice that I believe needs to be considered by the Council or brought to the attention of the public. My reasons for issuing a public interest report in this instance were that this matter:

- had been and still is of significant public interest in the local media;
- needed to be brought to the attention of the public;
- needed the Council to take appropriate action; and
- needed a response from the Council following previous failures to take action or respond to concerns raised.

I identified a number of weaknesses in the Council's arrangements for the award and management of the HES contract. I reported that, whilst I did not identify any specific loss to public funds, the Council's arrangements did not, in my view, demonstrate good governance and value for money were being secured from this contract. As a result, the Council had exposed itself to significant risks. The weaknesses identified were, in my view, indicative of similar failings identified in other recent reports issued to the Council. They highlighted the need for the Council to strengthen its arrangements for demonstrating good governance and securing value for money in its use of public funds.

Audit Commission, 3rd Floor, Millennium House, 60 Victoria Street, Liverpool, L1 6LD  
T 0151 233 4276 F 0151 236 3668 [www.audit-commission.gov.uk](http://www.audit-commission.gov.uk)

I reported that the Council needed to take action to secure improvements in a number of areas, in particular:

- to demonstrate good governance, by improving the Council's arrangements for managing and reporting risks, declaring interests, reviewing and complying with contract procedure rules, delivering internal audit, reporting to elected members and responding to whistle-blowing; and
- to demonstrate value for money, by improving the Council's arrangements for tender evaluation and contract management, including contract variation, record keeping and performance management.

The Council has begun to respond to the messages from my work. For example, improved procedures and systems for recording, managing and reporting contract variations have already been established. I have also noted the work undertaken on the Council's arrangements for demonstrating ongoing value for money, based on the Audit Commission's report 'Going the Distance'. Nevertheless, much is still to be done to mitigate a number of the risks identified by my work, for this contract, for other Council contracts and for the Council's overall arrangements for securing good governance and value for money.

The Council considered my report at its meeting on 16 July 2012, including its response to the 21 recommendations included in the action plan. I will monitor the Council's response in accordance with my responsibilities under sections 11 and 12 of the Audit Commission Act 1998 as part of my 2011/12 audit.

### **Opinion on the 2010/11 financial statements of Wirral Council**

I issued an unqualified opinion on the Council's 2010/11 financial statements on 30 September 2011 in line with the statutory deadline. The amendments to the accounts did not change the financial position of the Council as at 31 March 2011. However, I raised a number of significant issues in my Annual Governance Report (AGR) that I presented to the Audit and Risk Management Committee on 28 September 2011:

- the financial statements were adjusted for a material amendment of £64.8m to the cash flow statement and a number of other errors that indicated there was limited quality assurance of the statements approved by the Director of Finance;
- there were a significant number of errors in the International Financial Reporting Standards restatement exercise and the audit extended from January to the end of August 2011 due to the number of accounts' versions presented for audit;
- the accounts were signed by the Director of Finance on 4 July which was after the 30 June deadline;
- not all of the working papers were presented for audit to the deadline and some were not to standard; and
- there were major weaknesses in internal controls in respect of non-current assets resulting in a significant number of the errors in the statements.

I made a number of recommendations to secure required improvements for 2011/12, in particular to ensure that:



- sufficient and appropriate capacity is applied to producing the financial statements by the statutory deadline and getting them right first time; and
- delivery against the milestones and deadlines in the closedown and audit plans is monitored.

I also issued an unqualified opinion on the Council's 2010/11 whole of government accounts return in early October 2011.

### **Opinion on the 2010/11 financial statements of the Merseyside Pension Fund**

I issued unqualified opinions on the Merseyside Pension Fund 2010/11 financial statements included in the Council's accounts and in the Pension Fund Annual Report. I reported to the Audit and Risk Management Committee on 28 September 2011 two material errors in the accounts - the omission of a Net Assets Statement as at 1 April 2009 and a mis-classification of £273m pooled investments as equity – that Pension Fund officers had amended.

### **2011/12 value for money conclusion**

I issued a qualified value for money conclusion on 30 September 2012. I concluded that the Council had made proper arrangements to secure economy, efficiency and effectiveness in its use of resources, except for its inability to provide information on activity and performance for the HES contract. The 'public interest report' section of this letter above refers.

I also reported by exception in relation to weaknesses in the Council's arrangements for promoting and demonstrating the principles and values of good governance and for managing risks and maintaining a sound system of internal control, reflecting in particular my consideration of a number of whistleblowing issues and from the Council's inadequate arrangements for recording and controlling vehicles, plant and equipment assets.

### **Claims and returns**

Under section 28 of the Audit Commission Act 1998, the Audit Commission may, at the request of government departments, make arrangements for certifying claims and returns. I reported my assessment of the Council's arrangements for preparing claims and returns and information in March 2012 and in a supplementary report in June 2012.

In 2010/11, I certified ten claims and returns with a total value of over £260 million. Of these, I carried out a limited review of three claims and a full review of seven claims. I:

- amended eight claims;
- qualified five claims;
- assessed that the control environment could not be relied upon for seven of the ten claims and returns submitted for certification; and
- made 32 recommendations to improve arrangements (20 high and 12 medium priority).

My findings have continued to emphasise the need for the Council to secure improvements in its arrangements for maintaining sound governance and for securing value for money, not least in the findings of my certification work on the award of a repair contract as part of the West Kirby Marine Lake Protection Works claim.

## Fees

I outline below the revision to the audit fee for the audit of the Council that I have now agreed with the Acting Chief Executive and Director of Finance. The revised audit fee reflects:

- £32,000 additional fee for work in respect of the financial statements audit - the AGR outlined the difficulties experienced during the audit; and,
- £75,000 additional fee for work in respect of my consideration of the HES contract.

**Table 1 Fees – Wirral Council**

|  | Planned fee 2010/11 (£) | Actual fee 2010/11 (£) |
|--|-------------------------|------------------------|
| Audit                                      | 392,000                 | 499,000                |
| Claims and returns                         | 128,000                 | 123,000                |
| Non-audit work (National Fraud Initiative) | 2,000                   | 2,000                  |
| Total                                      | 522,000                 | 624,000                |

*The above excludes fee rebates received by the Council from the Audit Commission directly of £34,609.*

The actual audit fee for the Pension Fund of £54,065 was in line with the planned fee.

## Closing remarks

I have discussed and agreed this letter with the Acting Chief Executive and Acting Director of Finance. While this has been another challenging year for the Council, I wish to thank Members and staff for the positive and helpful approach they have taken to my audit. I also wish to thank senior management and the Audit and Risk Management Committee for their support and co-operation during the audit.

I look forward to continuing to work with members and officers – and with the recently established Improvement Board - during the 2011/2012 audit to monitor the Council's progress in implementing the required improvements to the Council's financial, performance and governance arrangements that are set out in this letter and the related reports.

Yours sincerely

Michael Thomas  
District Auditor

**Annex 1**

Reports issued during the year:

**Table 2 2010/11 reports**

| <b>Report</b>  | <b>Council</b>   | <b>Pension Fund</b>  |
|--|--|--|
| Audit fee letter   | April 2010   | June 2010  |
| Audit plan   | December 2010  | December 2010  |
| Pre-statements memo  | June 2011  |  |
| Annual Governance Report<br>Supplement/update<br>Final position                  | September 2011   | September 2011   |
| Grants and returns report<br>Supplement  | March 2012<br>June 2012  |  |
| Report in the Public Interest –<br>Highways and Engineering<br>Services contract | June 2012  |  |
| Progress reports to Audit and<br>Risk Management Committee                       | June, September and<br>November 2010;<br>January, March, June,<br>September and November<br>2011; and<br>February, March and June<br>2012. | June, September and<br>November 2010;<br>January, March, June,<br>September and November<br>2011; and<br>February, March and June<br>2012. |

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# Audit Committee update

Wirral Council

Audit 2011/12

**The Audit Commission is a public corporation set up in 1983 to protect the public purse.**

**The Commission appoints auditors to councils, NHS bodies (excluding NHS foundation trusts), local police bodies and other local public services in England, and oversees their work. The auditors we currently appoint are either Audit Commission employees (our in-house Audit Practice) or one of the private audit firms.**

**We also help public bodies manage the financial challenges they face by providing authoritative, unbiased, evidence-based analysis and advice.**

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# Introduction

**1** The purpose of this paper is to provide the Audit and Risk Management Committee with a report on progress in delivering our responsibilities as your external auditors. It includes an update on the externalisation of the Audit Practice.

**2** This paper also seeks to highlight key emerging national issues and developments that may be of interest to members of the Audit and Risk Management Committee. The paper concludes by asking a number of questions that the Committee may wish to consider in order to assess whether it has obtained sufficient assurance on emerging issues.

**3** If you require any additional information regarding the issues included within this briefing, please contact me or your Audit Manager using the contact details at the end of this update.

**4** Finally, please also remember to visit the Audit Commission's website ([www.audit-commission.gov.uk](http://www.audit-commission.gov.uk)) that now enables you to sign up to be notified of any new content that is relevant to your type of organisation.

Michael Thomas

District Auditor

3rd September 2012



# Progress report

## Financial statements 2011/12

5 We have substantially completed our work on the statement of accounts for Wirral Council and Merseyside Pension Fund. The results of our audit are included in the Annual Governance Reports being presented to this meeting of the Audit and Risk Management Committee.

## VFM conclusion 2011/12

6 My value for money conclusion is included in the Annual Governance Reports being presented to this meeting of the Audit and Risk Management Committee. A report on Gifts, hospitality and conflicts of interest is also being presented to support my value for money conclusion.

## Annual audit letter 2010/11

7 My Annual Audit Letter for 2010/11 was delayed due to the reporting of the Highways and Engineering Services Report in the Public Interest. I issued my Letter on 15 August 2012 and presented it to Cabinet on 6 September 2012. It is on the agenda for this meeting of the Audit and Risk Management Committee.

## Other areas of work

### Grant claims and returns

8 Our 2011/12 grants claims programme is progressing as planned. The number of grants and returns subject to certification by us has reduced significantly and should result in a lower fee than originally planned. Any claims work still progressing for deadlines after the 31 October 2012 will be completed by the new audit provider.

### Improvement Board

9 I am continuing to work with the Improvement Board during the 2011/2012 audit to monitor the Council's progress in implementing the required improvements to the Council's financial, performance and governance arrangements. I have agreed with officers that I will charge an additional fee in respect of this work and will report to members the final position in the Annual Audit Letter.

### Information and questions from the public

10 Appendix 2 of the Audit Plan issued in January 2012 and presented to the Audit and Risk Management Committee at the start of February 2012 stated that the fee set assumed there would be no questions asked or

objections made by local government electors. I have received a significant number of questions that required my consideration but have not to date received any objections. I will agree with officers the additional fee for this work and report to members the final position in the Annual Letter.

# Update on outsourcing the work of the Audit Practice and the residual Audit Commission

## Audit appointment from 2012/13

**11** At its July 2012 meeting, the Audit Commission Board confirmed the audit appointments for the audit of the accounts of all principal bodies from 2012/13. These appointments commenced on 1 September 2012.

**12** On 31 July 2012, the Director of Audit Policy and Regulation wrote to chief executives of all principal bodies to inform them of the Board's decision and to confirm their new audit provider.

**13** Each firm has made its own arrangements for making initial contact with the audited bodies to which it has been appointed.

**14** For our part, we remain committed to:

- fulfilling our remaining responsibilities to the high standards you expect and deserve; and
- managing a smooth transition from the Audit Practice to your new audit provider, Grant Thornton.

## 2012/13 audit fees

**15** The proposed fee has been determined by the Audit Commission following consultation and for Wirral Council for 2012/13 is £ 211,680. The proposed fee for the Pension Fund is £32,558.

## Audit Commission senior appointments

**16** The Audit Commission is reducing and reshaping its workforce so that it can deliver its remaining core functions of audit regulation, contract management and sector support.

**17** The Department of Communities and Local Government (DCLG) has advertised for a new Chairman of the Audit Commission to lead through the period of transition and downsizing, in advance of its proposed abolition. The new Chairman will take up post following the end of the term of office of the current Chairman in September 2012.

**18** More recently, the Board of the Audit Commission has announced the appointment of Marcine Waterman as Controller of Audit with effect from 1 September 2012. Marcine is currently the Commission's Director of Audit Policy and Regulation.

## Other matters of interest

### Draft Local Audit Bill

**19** In 2011 the Government consulted on its proposals for a new local public audit framework. It published its response in January 2012.

**20** The draft Local Audit Bill was subsequently published in July 2012 for consultation and pre-legislative scrutiny.

**21** This draft Bill sets out:

- the proposed new audit framework for local public bodies;
- the process for the appointment of auditors; and
- and the regulatory framework for local public audit.

**22** The consultation closed on 31 August 2012.

### 2012/13 National Fraud Initiative (NFI)

**23** The NFI Team sent a request for data to all participants' directors of finance in June 2012 and also announced the launch of the Audit Commission's 2012/13 web application.

**24** Participants are required to submit the required data sets, through the secure NFI web application, by 8 October 2012.

### 2010/11 local government claims and returns

**25** The Audit Commission has recently published a report summarising the results of its certification work in 2010/11. Appointed auditors provided assurance to grant-paying bodies on 2,174 claims and returns for 2010/11, covering £51 billion of expenditure.

**26** The report shows that auditors agreed amendments to claims and returns totalling £47.6 million and issued 509 qualification letters. Across all schemes, 23 per cent of auditors' certificates were qualified (Wirral: 50%).

**27** The housing and council tax benefit subsidy scheme continues to have high levels of amendments and qualification letters. Of the 2010/11 subsidy claims, 72 per cent were amended and 73 per cent had qualification letters (Wirral: amended and subject to a qualification letter).

**28** Auditors reported examples of authorities that had reduced the number of errors, the number of issues requiring attention and certification fees. They highlighted improved working papers, as well as the increased supervision and review of claims and returns.

**29** Given the issues that auditors continue to identify, all authorities should review their arrangements against the Audit Commission's guidance 'Claims and Returns: Good Practice for Authorities', which can be found on the Audit Commission's website.

## **Localism Act – update on standards and conduct arrangements**

**30** On 28 June 2012, DCLG wrote to all principal authorities confirming that the new standards and conduct arrangements apply from 1 July 2012.

**31** The new arrangements, set out in the Localism Act 2011, require authorities to:

- develop a local code of conduct dealing with the conduct of members and co-opted members. DCLG has provided an illustrative example of a local code of conduct;
- maintain and publish a register of interests; and
- appoint an independent person to provide advice to the authority on any allegations it may be considering and to members who may be the subject of the allegation(s). In the letter, DCLG confirms the transitional arrangements for the appointment of the independent person.

**32** DCLG has stated that it also intends to publish a guide to members' pecuniary interests.

## **Public sector internal audit standards**

**33** We have previously advised you about the collaboration of the Chartered Institute of Internal Auditors (IIA) and the Chartered Institute of Public Finance and Accountancy (CIPFA) on the development of public sector internal audit standards.

**34** A draft set of standards has now been produced and have been issued for consultation. These can be found on CIPFA's website. The consultation exercise ended on 14 September 2012.

## Key considerations

**35** The Audit and Risk Management Committee may wish to consider the following questions in respect of the issues highlighted in this briefing paper.

- Has the Council established a timetable to enable the provision of the NFI data by the deadline of 8 October 2012?
- Has the Council reviewed its arrangements against the Audit Commission's guidance 'Claims and Returns: Good Practice for Authorities'?
- Has the Council introduced the new standards and conduct arrangements required by the Localism Act 2011?
- Has the Council considered responding to the Government's consultation on the draft Local Audit Bill?
- Has the Council considered responding to the consultation on public sector internal audit standards?

## Contact details

**36** If you would like further information on any items in this briefing, please contact either your District Auditor or Audit Manager.

**37** Alternatively, all Audit Commission reports - and a wealth of other material - can be found at [www.audit-commission.gov.uk](http://www.audit-commission.gov.uk).

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September 2012



# **Highways and engineering services contract award and management**

**Wirral Council**

**Report in the Public Interest**

**Audit 2010/11**

**8 June 2012**

**The Audit Commission is a public corporation set up in 1983 to protect the public purse.**

**The Commission appoints auditors to councils, NHS bodies (excluding NHS foundation trusts), local police bodies and other local public services in England, and oversees their work. The auditors we appoint currently are either Audit Commission employees (our in-house Audit Practice) or one of the private audit firms. Our Audit Practice also audits NHS foundation trusts under separate arrangements.**

**We also help public bodies manage the financial challenges they face by providing authoritative, unbiased, evidence-based analysis and advice.**

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# Summary report

## Introduction

**1** This report is made under section 8 of the Audit Commission Act 1998 (the Act). This allows me to issue a report in the public interest where a matter comes to my notice to allow it to be considered by the Council or brought to the attention of the public.

**2** During 2008, Wirral Council (the Council) carried out a competitive tendering process for the provision of highway and engineering services (HES) aimed at bringing together several previous contracts in order to rationalise the services and provide better value for money. Six of the seven shortlisted tenderers submitted a bid, including the Council's in-house Operational Services Department (OSD).

**3** The contract was awarded on 16 October 2008, with effect from 1 April 2009. Staff within OSD transferred to the successful bidder on 1 April 2009 under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**4** In November 2008, a group of OSD staff raised concerns about the procurement process with the Council's Chief Executive and an internal investigation was carried out. The group was not satisfied that their concerns had been dealt with appropriately by that investigation and, in March 2009, they raised their concerns with me.

## My responsibilities

**5** External audit is an essential part of the process of accountability for public money. Appointed external auditors operate within the duties, powers and discretions given under the Audit Commission Act 1998 and the Code of Audit Practice (the Code) approved by Parliament. The Code determines the nature, level and scope of external audit work. Under the Code, the external auditor provides:

- an independent opinion on a public body's accounts; and
- an independent value for money conclusion as to whether a public body has put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

**6** Appointed auditors have certain other powers, including reporting in the public interest under section 8 of the Act. They consider matters brought to their attention by members of the public in undertaking their work.

**7** Appointed auditors are prescribed persons for disclosures relating to ‘the proper conduct of public business, value for money, fraud and corruption in local government and health service bodies’. The obligation of appointed auditors to a whistleblower under the Public Interest Disclosure Act 1998 (PIDA) is confined to the receipt of disclosures. PIDA neither requires nor empowers appointed auditors to carry out an investigation into the subject matter of any disclosure made or to report the results of any investigation undertaken. However, appointed auditors will consider any information received as a result of a disclosure and determine what action, if any, to take in the context of their existing statutory and professional powers and duties.

## **Audit approach**

**8** I carried out an initial review of aspects of the HES contract award in the course of my 2009/10 audit, focused on the tendering stage. I reported the outcome of my review in September 2010. My report was also considered by the Council’s Audit and Risk Management Committee in September 2010. I undertook, however, to follow up that work when the Council’s assessment of the benefits realised from, and hence the value for money of, the contract was available.

**9** In undertaking this follow-up work, I have:

- followed up the recommendations and actions agreed in my previous report;
- assessed the arrangements for achieving value for money, including benefits realisation and governance; and
- considered further information from the whistleblowers in the context of my responsibilities.

## **Main conclusions**

**10** I have identified a number of weaknesses in the Council’s arrangements to award and manage the HES contract. Whilst I have not identified any specific loss to public funds, the Council’s arrangements do not, in my view, demonstrate good governance and value for money are being secured from this contract. As a result, the Council has exposed itself to significant risks. The weaknesses identified are, in my view, indicative of similar failings identified in other recent reports issued to the Council. They highlight the need for the Council to strengthen its arrangements for demonstrating good governance and securing value for money in its use of public funds.

**11** The Council needs to take action to secure improvements in a number of areas, in particular:

- to demonstrate good governance, by improving the Council’s arrangements for managing and reporting risks, declaring interests, reviewing and complying with contract procedure rules, delivering internal audit, reporting to elected members and responding to whistleblowing; and

- to demonstrate value for money, by improving the Council's arrangements for tender evaluation and contract management, including contract variation, record keeping and performance management.

**12** The Council has begun to respond to the messages from my ongoing work. Improved procedures and systems for recording, managing and reporting contract variations, for example, have already been established. I have also noted the work undertaken on the Council's arrangements for demonstrating ongoing value for money, based on the Audit Commission's report 'Going the Distance'. Nevertheless, much is still to be done to mitigate a number of the risks identified by my work, for this contract, for other Council contracts and for the Council's overall arrangements for securing good governance and value for money. My recommendations are set out in the attached action plan.

### **The way forward**

**13** The Council has a duty to respond to this report in accordance with sections 11 and 12 of the Audit Commission Act 1998. I will monitor the Council's response as part of my 2011/12 audit.

# Detailed report

## Pre-tender stage (before 5 September 2008)

**14** In the administration of public funds, it is important not only that the highest standards of conduct are observed, but also that they are seen to be observed. For that reason, public bodies should put in place robust arrangements to combat corruption and avoid suspicions of corruption. Amongst those arrangements are clear policies and processes for dealing with contractors and potential contractors, including arrangements for declaring personal and family relationships with contractors and potential contractors, and managing the threats that arise from such relationships.

**15** In my report to the Council in September 2010, I raised concerns about:

- a meeting between the Director of Technical Services, another senior Council officer and a representative from the winning contractor in the pre-tender period for the HES contract (whilst recognising that I had found no evidence that the meeting influenced the outcome of the tendering exercise or constituted 'canvassing'); and
- the failure of the Director of Technical Services to declare a personal relationship with the representative from the winning contractor until 11 November 2008, after the contract had been awarded.

**16** As a result of the work I have subsequently undertaken, I have now concluded that:

- the purpose of the meeting held between the Director of Technical Services, another Council officer and a contractor representative in the pre-tender period was to discuss the contract and sub-contract arrangements. This is in contravention of the Council's procedures;
- as the contractor was providing services to the Council prior to the letting of the HES contract, the Director of Technical Services should have made a declaration of his relationship with the contractor's representative before he did so in November 2008; and
- the declaration of interest made by the Director of Technical Services in November 2008 was:
  - incomplete (in that it did not record any discussions held with the Council's Chief Executive or agreed actions to mitigate risk); and
  - inconsistent with other evidence (in that it indicated that the Director considered there was no conflict of interest because he believed that the representative of the contractor was responsible for new products/ product development whereas he had in fact met with the representative specifically to discuss the contract).

**17** Management considered this matter in March 2009 and concluded at that time, and again, following my 2010 report, that on the basis of the information then available, no further action was required.

**18** The Invitation to Tender specifically prohibits any 'canvassing' on the part of tenderers. Meeting with one potential bidder and no other during the pre-tender period to discuss contract arrangements is also likely to have placed the Council in breach of the general EU Treaty principles of fairness and equal treatment which are applicable to procurement. I have not seen any evidence that, during its initial investigation, management considered whether the meeting between the contractor and Council officers in the pre-tender period amounted to canvassing or resulted in a breach of EU requirements.

**19** The Council should:

### Recommendations

**R1** Reconsider the issue of the declaration of interests for the HES contract having regard to the information now available.

**R2** Reinforce to all staff their responsibilities for accurate, complete and timely declarations of interests.

**R3** Provide training to all staff involved in procurement on communication with tenderers during the pre-tender and tender evaluation periods.

---

### Tender evaluation

**20** Thorough and robust evaluation of tenders in accordance with the published evaluation methodology is necessary so that a public body can make a fully informed decision on tender award. The process includes scrutiny of the rates tendered:

- to ensure that they are complete and internally consistent; and
- to identify abnormally low rates and consider whether they cast doubt on the ability of the contractor to deliver the contract at the rates tendered.

**21** The successful contractor quoted and confirmed rates for some elements of electrical work for street lighting and traffic signs that were only 2 per cent of the average of those of other tenderers. The Council's Contract Evaluation Team queried these rates but subsequently accepted that the rates were genuine. The issue was not reported to senior officers or elected members prior to the award of the contract.



**22** After the award of the contract, officers considered the very low rates for electrical work were the result of an ambiguity in the contract, a view not shared by the winning contractor. It uniquely tendered on the assumption that the Council was responsible for making payments directly to the electrical sub-contractor over and above the rates tendered. As a result, the Council:

- paid an estimated additional £640k directly to the sub-contractor in the period to October 2010 which was not taken into account in the tender evaluation; and
- agreed a contract variation from October 2010 to increase the rates to include the costs of the sub-contractor, increasing the estimated tender price by £855,000 over the remaining life of the five-year contract.

**23** Whilst Officers have accepted that this issue has had a significant consequential financial impact they also have pointed to non-financial benefits from the changes made.

**24** The estimated additional £1.495m would not have increased the tender price above that of the next lowest tenderer. However, the subsequent variation to the rates for electrical works casts doubt on the robustness of the tender evaluation process. Officers have accepted that procedures need to be amended for future contracts in this respect.

**25** A number of other rates have also subsequently been amended to reflect ambiguities in the tender specification, most notably for milling and planing. These also had a financial impact, although neither the Council nor I have quantified the impact.

**26** In addition, there is evidence that the contractor has from the inception of the contract struggled to secure a financial return on the contract. Information provided to me, and an external independent review report in June 2010, confirmed that this was the case. This calls into question the effectiveness of the Council's assessment of unusually low rates.

**27** The Council should:

## Recommendations

- R4** Review arrangements for ensuring that tender specifications are robust and do not contain ambiguities that limit future benefit realisation.
  - R5** Quantify and report to elected members the additional cost of using the electrical sub-contractor during the period April 2009 to October 2010.
  - R6** Review procedures for challenging individual rates and the overall impact of rates tendered during the tender evaluation process.
-

## Contract award (16 October 2008)

### Signing a written contract

**28** The Council's Contract Procedures Rules require a signed contract to be in place for all contracts awarded. If work commences before a written contract is in place, there is an increased risk of dispute as to the contractual terms governing the work.

**29** The HES contract was not signed until 17 March 2010, some 12 months after the contract commencement date. In the interim, the Council reduced but did not eliminate the risk by writing to the contractor to confirm that it could commence work before the formal contract was signed on the basis of the contract terms contained in its tender.

**30** Whilst the Legal and Technical Services Departments were aware of the risk, it was not entered in either the departmental or Council-wide risk register. Furthermore, elected members were not adequately advised of the risks. The report to the Sustainable Communities Overview and Scrutiny Committee in November 2009 did not advise elected members that the contract remained unsigned and the risks of proceeding on this basis.

**31** The Council should:

### Recommendation

**R7** Ensure that any decision to commence significant contracts prior to contract signature is recorded in risk registers, appropriately approved and reported to elected members.

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### Form of contract

**32** Various standard forms of contract are available that have different provisions about the sharing of risks and rewards between the parties. The Council engaged specialist consultants during the development of the Invitation to Tender who advised the Council to consider migrating over time from the initial contract form to one that would allow a greater sharing of risk and reward with the contractor, while retaining an appropriate level of control for the Council.

**33** Best practice for major projects involves a series of independent 'Gateway' reviews at key stages of the project to provide assurance that the project can progress successfully to the next stage. The Council has commissioned a series of Gateway reviews of the HES contract. The Gateway reports issued in February 2009 and June 2010 identified a continued mutual desire of the Council and the contractor to migrate the form of the contract and recommended a supporting risk and benefits options appraisal.

**34** Despite considering changing the form of contract for some elements of the work, the Council has so far decided not to migrate the contract. The Gateway recommendation, however, remains important should the Council proceed with such migration in future. The Council will also need to consider and take legal advice on whether any proposed migration represents a material change which would result in a breach of procurement regulations before making a decision.

**35** The Council should:

### Recommendations

**R8** Undertake an option appraisal to evaluate the risk and benefits of HES contract form migration, and evaluate and consider the findings, in advance of any such migration.

**R9** If migration of the contract is considered, determine whether this represents a material change which would result in a breach of procurement regulations before making a decision.

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### Contract mobilisation (16 October 2008 to 31 March 2009)

**36** The necessary work to underpin the benefits realisation and performance management framework was not completed in advance of the commencement of the contract. The benefits realisation plan itself was approved by the Council in May 2009, a month after the 1 April 2009 date of contract commencement. The performance management framework was not approved until July 2009. The delay in implementation of an effective performance management framework during the contract mobilisation stage exposed the Council to the risk of inadequate contract management on commencement of the contract. The practical consequences of this weakness in the Council's arrangements are considered further in the next section of this report.

**37** The Council should:

### Recommendation

**R10** Provide and consider reports on departures from contract mobilisation plans and the associated risks.

---

## Contract management and monitoring (from 1 April 2009)

### Authorisation of contract variations

**38** It is inevitable that circumstances will arise that were not envisaged when a contract was tendered. Variations to contracts are therefore necessary, but these need to be properly controlled so that the Council can ensure that any variations do not breach EU procurement requirements and demonstrate that it continues to secure value for money.

**39** The Council's Contract Procedure Rules require:

- the reporting of any variation over £50,000 to the Director of Finance; and
- the approval of the relevant Cabinet member or Committee to any variation increasing the contract price by more than £20,000, except where the variation is necessary for technical reasons.

**40** The Council has now identified that there were four variations to the contract of more than £50,000 in the period from April 2009 to May 2011, with an aggregate estimated value of over £1.14m. These variations were not reported in line with the Contract Procedure Rules to the Director of Finance. I note in this context that the Interim Director of Technical Services discussed the largest variation (for £855,000 relating to electrical works) with Internal Audit in email exchanges in April 2010. Despite advice from Internal Audit for the Interim Director to report the variation to elected members this did not happen until I raised the issue.

**41** The required approval for the variations from the relevant Cabinet member or Committee was also not obtained.

**42** The Council has not to date evaluated the number or value of variations between £20,000 and £50,000 within this contract to assess the overall impact.

**43** The Council has contended that there was ambiguity in the application of the Contract Procedure Rules to long-term contracts. Whilst I accept that the rules were not fit for purpose, officers should have sought clarification as to whether the rules applied and, if not, what rules did apply. I raised this ambiguity with officers in May 2011. The Council has adopted revised Contract Procedure Rules on variations (from October 2011) in response.

44 The Council should:

## Recommendations

**R11** Provide a clear summary to elected members of variations and new rates, the reasons for these and the financial impact (quantifying it against the original tender or the latest activity information) in order to inform the value for money assessment and ensure compliance with Contract Procedure Rules.

**R12** Monitor compliance with the revised Contract Procedure Rules for variations.

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## Record keeping

**45** The contract provides for important contract management procedures, such as those relating to 'early warnings' (raised by either party where there are matters that could impact on price, delivery or performance), 'compensation events' (a payment to or from the contractor possibly following an early warning or a project manager assessment) and 'project manager assessments' (an assessment of an issue that is usually raised as part of an early warning and may or may not lead to a compensation event). For the period April 2009 to May 2011, there were 294 early warnings, 92 compensation events and 17 project manager assessments.

**46** Effective contract management requires good record keeping of multiple contract management procedures. In the absence of such record-keeping, it is:

- difficult to assess the ongoing financial impact of changes to the contract; and
- more difficult to defend claims made against the Council or to hold the contractor to account; although, for this contract, the Council has successfully defended a significant arbitration claim brought against it by the contractor (embodied in three early warnings the first of which was raised in June 2008 but not adjudicated upon until March 2011).

**47** Internal Audit reviews during 2010 concluded that record keeping with regard to contract management was inadequate. Based on my own work, I support that conclusion:

- the potential impact of early warnings was often not quantified, sometimes not recorded and did not inform the departmental risk register;
- many compensation events and project manager assessments were completed without reference to the related early warning;

- for many compensation events, the financial impact was not quantified and, indeed, it was often difficult to establish whether they had been finalised. In the case of one early warning instigated by the Council on 20 May 2009, the compensation event documentation was not started until March 2011 when I raised questions; and
- the overall impact of compensation events and project manager assessments is difficult to identify and quantify.

**48** I raised my concerns over record keeping with the Council in May 2011. I have been provided with evidence that indicates that improvements have been made in record-keeping.

**49** The Council should:

### Recommendation

**R13** Establish clear standards for documentation of contract management procedures and monitor compliance.

---

### Performance management

**50** Effective management of a contract is necessary to demonstrate that the anticipated benefits are being secured. The Invitation to Tender and contract set out key performance measures, reporting and audit arrangements against which the contractor's performance could be evaluated.

**51** In the first year of the contract, there was very limited monitoring of performance. The report to the Sustainable Communities Overview and Scrutiny Committee in June 2010 advised elected members that only one class of planned works – 'priority 2' – was being monitored. The baseline for performance was not established until the start of the second year of the contract. At that stage, an external 'Gateway 5' report also identified that there was no performance information on reactive requests, customer feedback, resolution of issues reported by the public and non-adherence to statutory practices on street works.

**52** The report to the Sustainable Communities Overview and Scrutiny Committee in December 2010 contained no information on achievement against the planned maintenance protocol, compliance with contractual requirements on health and safety, recycling or customer satisfaction targets.

**53** Despite the weaknesses in performance measurement and monitoring, identified in June 2010, the Director of Technical Services presented an annual report on the contract to the Sustainable Communities Overview and Scrutiny Committee in September 2011 that indicated that all performance measures had been achieved in the second year of the contract.

54 The Council should:

## Recommendations

**R14** Introduce an effective performance management system from the start of a contract.

**R15** Undertake regular tests on the accuracy of performance information reported.

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## Governance arrangements

**55** The Council should put in place proper arrangements to ensure stewardship and governance, and should regularly review the adequacy and effectiveness of them. In the course of my work on the HES contract, I have identified weaknesses in the Council's arrangements in a number of areas, as evidenced in my consideration of the contract arrangements elsewhere in this report. There are, in addition, however, some wider themes that I also wish to raise with regard to the Council's arrangements for:

- managing risks, including reporting to elected members;
- understanding costs and performance and achieving efficiencies in activities;
- maintaining a sound system of internal control, incorporating an effective internal audit function; and
- promoting and demonstrating the principles and values of good governance.

## Risk management

**56** The Council has from the outset identified a number of significant risks from the HES contract. My review shows that whilst a number of key risks identified were well managed, there are areas where acknowledged risks have not been adequately mitigated. Examples highlighted in this report include those arising from:

- ambiguity in elements of the tender documents;
- poor documentation of early warnings;
- the absence of performance monitoring from the contract start date;
- the absence of clear performance targets or requirements in some areas; and
- concerns raised in external independent Gateway reports about the potential for breakdown in communication and partnership working due to lack of delivery against work schedules.

**57** I have also identified a number of examples where risks have not been properly identified and as a consequence have not always been clearly reported to elected members in a timely manner. These include:

- the response to an anonymous whistleblower regarding a significant claim against the Council by the contractor;
- variations to the contract;

- the delay in contract signing, and
- non-compliance with Contract Procedure Rules.

**58** In addition, independent external reviewers undertook a series of formal ‘Gateway’ reviews at key stages in the process. The first four of these were reported in full to Cabinet. But for the fifth, prepared in June 2010, the Cabinet received only a summary that omitted some significant risks that should, in my view, have been reported to elected members. For example, risks concerning:

- the performance of the contractor in delivering during the mobilisation stage;
- ongoing improvements in value for money, requiring a modern asset register IT system; and
- the need to complete a log of lessons learnt for future contracts.

**59** The Council should:

### Recommendations

**R16** Establish and implement clear procedures for identifying risks and escalating them through departmental and corporate risk registers.

**R17** Ensure significant risks are reported promptly to elected members.

**R18** Ensure elected members receive and consider the full reports for all ‘Gateway’ reviews to enable them to understand fully the risks facing the Council and agree corrective action.

### Understanding costs and performance

**60** Maintaining robust financial information underpins the Council’s ability to deliver its fiduciary responsibilities and to challenge how it secures economy, efficiency and effectiveness in its use of public funds. In March 2011, I asked senior Council officers for baseline financial and activity data for the HES contract. The financial data provided by the Council in response, received some five months after my request, could not be reconciled to publicly available data reported to elected members. This undermines the Council’s ability to demonstrate that it is securing ongoing value for money from this contract and, indeed, the robustness of the Council’s overall arrangements in this regard. I qualified my 2010/11 value for money conclusion accordingly.

**61** The Council should:

### Recommendation

**R19** Agree for all procurements the arrangements for collating on a routine basis the financial and performance information needed to evaluate the effectiveness of the procurement exercise.



## Internal Audit

**62** Under the Accounts and Audit (England) Regulations 2011, the Council is required to maintain an adequate and effective system of Internal Audit of its accounting records and control systems. As a tool of management, Internal Audit plays a key role in monitoring compliance with standards of governance, codes of conduct, standing orders and financial regulations. It also has a role in investigating breaches of standards of financial conduct and allegations of fraud and corruption. Its role is set out in Financial Regulations.

**63** Internal Audit carried out a review of the HES contract in February 2010. It provided a 3-star (good) level of assurance despite identifying a number of high-priority risks and recommendations in key areas of the contract management and monitoring systems.

**64** A follow-up review in August 2010 reported that:

- only one of the four recommendations in high-risk areas from the original review had been implemented;
- the other three recommendations in high risk areas had been partly implemented; and
- a new medium risk issue had been identified.

**65** Despite these weaknesses, Internal Audit confirmed the level of assurance as 3-star (good).

**66** The conclusions drawn by Internal Audit are not, in my view, supported by their findings and, as a result:

- the Council has been placed at increased risk that contract payment arrangements and the checking of the quality of work remained inadequate; and
- insufficient attention has been drawn to weaknesses in systems and procedures to reduce ongoing risks to the Council.

**67** I have previously raised areas for improvement regarding aspects of Internal Audit's compliance with required CIPFA standards, most notably in my report to the Audit and Risk Management Committee in January 2010. My concerns remain, reinforced by my findings from my review of Internal Audit's work on the HES contract. I note, and welcome, in this regard the recent public commitment from the Deputy Chief Executive and Director of Finance to undertake a fundamental review of the Internal Audit section.

**68** The Council should:

### Recommendation

**R20** Consider the results of the fundamental review of Internal Audit at elected member level and agree corrective action.

---

## Whistleblowing

**69** The arrangements for staff and contractors to raise relevant concerns with the Council are an important part of the Council's arrangements for promoting and demonstrating the principles and values of good governance. These include 'whistleblowing' arrangements that provide protection for staff and contractors who raise issues in good faith.

**70** I have previously been critical of the Council's whistleblowing arrangements:

- in my 2007/08 report into issues identified in the Directorate of Adult Social Services;
- in my 2008/09 ethical governance diagnostic; and
- in my 2009/10 report on the HES contract.

**71** I remain concerned that required changes to the Council's culture regarding whistleblowing and improvements to its whistleblowing arrangements have not been implemented with sufficient rigour or speed to give confidence to current employees that concerns will be treated seriously and fairly. Senior officers have acknowledged that more could, and should, have been done in this regard.

**72** It is important that the Council deals appropriately with allegations of inappropriate behaviour and ensures that the arrangements and culture within the Council enable individuals to have the confidence that they can report concerns without fear of reprisal. The Council has publicly stated on a number of occasions its desire to rectify its performance and reputation on matters of this nature. I commend the significant changes and resources the Council has put in place to respond to concerns of this nature, but much still needs to be done.

**73** The council should:

### Recommendation

**R21** Review at elected member level the adequacy of existing arrangements for receiving and considering concerns from whistleblowers and for agreeing corrective action.

---

# Appendix 1 Recommendations

## Recommendations

### Recommendation 1

Reconsider the issue of the declaration of interests for the HES contract having regard to the information now available.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 2

Reinforce to all staff their responsibilities for accurate, complete and timely declarations of interests.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 3

Provide training to all staff involved in procurement on communication with tenderers during the pre-tender and tender evaluation periods.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 4

Review arrangements for ensuring that tender specifications are robust and do not contain ambiguities that limit future benefit realisation.

**Responsibility**

**Priority**

**Date**

**Comments**

## Recommendations

### Recommendation 5

Quantify and report to elected members the additional cost of using the electrical sub-contractor during the period April 2009 to October 2010.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 6

Review procedures for challenging individual rates and the overall impact of rates tendered during the tender evaluation process.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 7

Ensure that any decision to commence significant contracts prior to contract signature is recorded in risk registers, appropriately approved and reported to elected members.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 8

Undertake an option appraisal to evaluate the risk and benefits of HES contract form migration, and evaluate and consider the findings, in advance of any such migration.

**Responsibility**

**Priority**

**Date**

**Comments**

## Recommendations

### Recommendation 9

If migration of the contract is considered, determine whether this represents a material change which would result in a breach of procurement regulations before making a decision.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 10

Provide and consider reports on departures from contract mobilisation plans and the associated risks.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 11

Provide a clear summary to elected members of variations and new rates, the reasons for these and the financial impact (quantifying it against the original tender or the latest activity information) in order to inform the value for money assessment and ensure compliance with Contract Procedure Rules.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 12

Monitor compliance with the revised Contract Procedure Rules for variations.

**Responsibility**

**Priority**

**Date**

**Comments**

## Recommendations

### Recommendation 13

Establish clear standards for documentation of contract management procedures and monitor compliance.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 14

Introduce an effective performance management system from the start of a contract.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 15

Undertake regular tests on the accuracy of performance information reported.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 16

Establish and implement clear procedures for identifying risks and escalating them through departmental and corporate risk registers.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 17

Ensure significant risks are reported promptly to elected members.

**Responsibility**

**Priority**

**Date**

**Comments**

## Recommendations

### Recommendation 18

Ensure elected members receive and consider the full reports for all 'Gateway' reviews to enable them to understand fully the risks facing the Council and agree corrective action.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 19

Agree for all procurements the arrangements for collating on a routine basis the financial and performance information needed to evaluate the effectiveness of the procurement exercise.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 20

Consider the results of the fundamental review of Internal Audit at elected member level and agree corrective action.

**Responsibility**

**Priority**

**Date**

**Comments**

### Recommendation 21

Review at elected member level the adequacy of existing arrangements for receiving and considering concerns from whistleblowers and for agreeing corrective action.

**Responsibility**

**Priority**

**Date**

**Comments**

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



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June 2012





# Annual governance report

Merseyside Pension Fund

Audit 2011/12



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# Key messages

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## **This report summarises the findings from my 2011/12 audit of the Pension Fund financial statements which is substantially complete.**

Subject to satisfactory completion of a small number of outstanding issues, I intend to issue an unqualified opinion on the Pension Fund's Annual accounts for 2011/12 and the Pension Funds Annual Report.

The Pension Fund presented me with a set of statements in accordance with the statutory deadline. The statements were produced to a good standard and were supported by a comprehensive set of working papers. The standard of the working papers and timeliness of their receipt represents a significant improvement to the previous year.

I identified a number of non-material errors, all of which have been amended by the Pension Fund. None of these errors had a significant impact to the reported performance of the fund.

I also identified a number of disclosure errors and non trivial errors, all of which the pension fund have amended. These are detailed for your information at appendix 3.

There are no other significant matters that I need to bring to your attention.

# Before I give my opinion

---

**My report includes only matters of governance interest that have come to my attention in performing my audit. I have not designed my audit to identify all matters that might be relevant to you.**

## **Independence**

I can confirm that I have complied with the Auditing Practices Board's ethical standards for auditors, including ES 1 (revised) - Integrity, Objectivity and Independence.

I am not aware of any relationships that may affect the independence and objectivity of the Audit Commission, the audit team or me, that I am required by auditing and ethical standards to report to you.

## **Next Steps**

I ask the Pension Fund Committee to:

- Consider the matters raised in this report before recommending the approval of the financial statements to the Audit and Risk Management Committee (ARMC) of Wirral Council.
- take note of the adjustments to the Pension Fund's accounts which are set out in this report (Appendix 3);
- recommend to the Audit and Risk Management Committee the letter of representation on behalf of the Pension Fund before I issue my opinion and conclusion (Appendix 4); and
- confirm your response to the proposed action plan (Appendix 6).

I will ask the ARMC to consider the recommendation of the Pension Fund Committee in relation to this report before it:

- considers the matters raised in this report before approving the financial statements;
- takes note of the adjustments to the financial statements which are set out in this report;
- approves the letter of representation before I issue my opinion; and
- agrees a response to the proposed action plan.

# Financial statements

---

**The Pension Fund’s financial statements are an important mechanism for the Pension Fund to account for its stewardship of public funds. As Members you have final responsibility for these statements. It is important that you consider my findings before you adopt the financial statements.**

## **Opinion on the financial statements**

Subject to satisfactory clearance of a small number of outstanding matters, I plan to issue an audit report including an unqualified opinion on the financial statements. My opinion will be included within Wirral Council’s Statement of Accounts and the financial statements included within the Pension Fund Annual Report. Appendix 1 and 1a contain copies of my draft audit reports.

As at 30 August 2012, my work is ongoing in a number of areas. These outstanding matters are:

- Completion of testing of investment valuations;
- Completion of review of related party transactions;
- Check of the final post audited financial statements; and
- Review of the final Annual Report.

I expect to complete all my work, including my final review procedures, before the Pensions Committee on 18 September. I will update the Committee as necessary as part of my oral report.

## Corrected errors

My work identified a number of non-material errors in the statements presented for audit. None of these have a significant impact on the financial position of the Pension Fund at 31 March 2012. These have now been amended. A schedule of the changes is attached, appendix 3. I also agreed a number of changes to disclosures and supporting narrative.

The most significant amendments are:

- Overstatement of Pooled Investment Vehicles of £3.279 m due to incorrect currency rates being used.
- Mis-classification of investment management fee credit as investment income - amendment of £3.687m.
- Re-classification of UK quoted equities to overseas quoted equities - amendment of £12.183 m.

## Specific risks and my findings

I reported to you in my December 2011 Audit Plan the specific risks that I identified relevant to my audit of your financial statements. In Table 1 I report to you my findings against each of these risks.

Table 1: **Risks and findings**

| Risk  | Finding   |
|---|---|
| <p><u>Scheme contributions</u></p> <p>The Pension Fund receives contributions in respect of equal pay settlements made by admitted bodies. Some but not all admitted bodies have made contributions in respect of equal pay. There is a risk this may lead to a material misstatement of contributions income in the financial statements.</p>  | <p>I have reviewed management's arrangements for ensuring that reasonable contributions have been made in respect of equal pay.</p> <p>I have considered settlements made within major scheduled bodies to the fund and assessed if they may give rise to potential material assets to the fund, if contributions were not made. I am satisfied that the risk of material misstatement has been reduced to an appropriately low level.</p>  |
| <p><u>Investment valuations</u></p> <p>The Pensions Statement of Recommended Practice (SORP) requires the valuation of investments to be at market value or where the value is not readily ascertainable, at the Fund's estimate of 'fair value'.</p> <p>The Pension Fund's accounting policies describe the valuation methodology used for unquoted investments, including hedge funds and private equity. These are in line with the valuations provided by the independent administrators, or where these are not available, at the investment managers' valuation.</p> <p>As reported in my 2010/11 Annual Governance report and supplement, unquoted investments, primarily private equity, were undervalued by £13m because out of date valuations were used.</p> | <p>I have reviewed the Pension Fund's due diligence procedures for the valuation of investments, including its review and consideration of AAF 01/06, ISAE 3402 controls reports from investment managers, and found these procedures to be adequate.</p> <p>My team is in the process of substantively testing investments. Their work has so far identified two investments where incorrect currency rates were applied. This has led to an overstatement of £3.279m in the net assets statement.</p> <p>I plan to have completed my testing by the 18 September. If there are any further significant errors I will update the Pensions Committee and Audit and Risk Management Committee.</p> |

## Risk

Impact of redundancies on capacity within the Pension Fund

I am aware that Wirral Council and the Pension Fund have undergone a redundancy process in 2010/11 and 2011/12. This may affect the capacity of the finance team to deliver materially correct statements within agreed timescales.

## Finding

The statements were provided within deadline, and supported by comprehensive working papers.

We have maintained regular dialogue with the Pension Fund officers and have been kept informed of significant changes in resources. Where potential weaknesses around separation of duties have arisen from the new structure, we are satisfied that the Pension Fund has applied adequate safeguards to mitigate risks.

## Weaknesses in internal control

It is the responsibility of the Pension Fund to develop and implement systems of internal financial control and to put in place proper arrangements to monitor their adequacy and effectiveness in practice. My responsibility as your auditor is to consider whether the Pension Fund has put adequate arrangements in place to satisfy itself that the systems of internal financial control are both adequate and effective in practice.

I have tested the controls of the Pension Fund only to the extent necessary for me to complete my audit. I am not expressing an opinion on the overall effectiveness of internal control.

The following weakness in internal control is only that I have identified during the audit that is relevant to preparing the financial statements.

Table 2: **Weakness in internal control**

## Issue

Out of date list of authorised employees within the Pension Fund to receive correspondence from external bodies, for example Fund Managers.

## Finding

An ex employee of the Fund is still listed as authorised to receive correspondence from external bodies, for example, Fund Managers. This employee has not been working at MPF for a period of 3 years. Whilst this employee is still employed by Wirral MBC, it is essential that only authorised employees of the fund are authorised to receive such information. I have been told that the Fund has postponed updating this information as it has been awaiting the conclusion of the internal restructure and the revised banking arrangements. However, this should be addressed without further delay.



## Recommendation

**R1** Ensure that the Pension Fund's authorised contacts list is updated. .

## Other matters

I am required to communicate to you significant findings from the audit and other matters that are significant to your oversight of the Pension Fund's financial reporting process including the following.

- Qualitative aspects of your accounting practice
- Matters specifically required by other auditing standards to be communicated to those charged with governance. For example, issues about fraud, compliance with laws and regulations, external confirmations and related party transactions.
- Other audit matters of governance interest.

My findings are reported in the table below:

Table 3: **Other matters**

| Issue  | Finding  |
|--|--|
| Breach of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 in regards to investment limits. | The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (which came into force on 1 January 2010) set out a required process for Pension Funds to follow when planning to increase investment limits. In 2011/12 the Pension Fund exceeded the limits as set out in their current Statement of Investment Principals (SIP), without following the proper procedure as set out in the regulations |
| Financial instruments disclosures  | The Pension fund has enhanced the financial instruments disclosures in 2011/12, in line with requirements. To be fully compliant with the requirements of the Code of Practice on Local Authority Accounting in the United Kingdom, further enhancements are needed, particularly in regards to the quantitative reporting of credit, currency and liquidity risk.   |

## Recommendation

- R2** Implement robust controls for monitoring and reporting against the investment limits set in the Statement of Investment Principals to ensure that future breaches of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 do not occur.
- R3** Review the current reporting arrangements for credit and liquidity risk, to enable fully compliant reporting in line with the Code of Practice on Local Authority Accounting in the United Kingdom.

## Pension Fund Annual Report

The Pension Fund prepared its draft Annual Report on 1 August 2012. Upon satisfactory completion of my audit of the financial statements, the Pension Fund will prepare its final Annual Report, which I will review. As a result I have not yet completed my review and report on the financial statements included in the Annual Report. I expect to report on the financial statements included in the Annual Report by 18 September 2012.

# Fees

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## I reported my planned audit fee in the December 2011 Audit Plan.

I will complete the audit within the planned fee.

Table 4: Fees

|                | Planned fee 2011/12 (£) | Expected fee 2011/12 (£) |
|----------------|-------------------------|--------------------------|
| Audit          | 59,181                  | 59,181                   |
| Non-audit work | 0                       | 0                        |
| <b>Total</b>   | <b>59,181</b>           | <b>59,181</b>            |

# Appendix 1 – Draft independent auditor’s report for the Councils financial statements

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## DRAFT INDEPENDENT AUDITOR’S REPORT TO THE MEMBERS OF WIRRAL BOROUGH COUNCIL - EXCERPT REGARDING MERSEYSIDE PENSION FUND.

### Opinion on the pension fund financial statements

I have audited the pension fund financial statements for the year ended 31 March 2012 under the Audit Commission Act 1998. The pension fund financial statements comprise the Fund Account, the Net Assets Statement and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom 2011/12.

This report is made solely to the members of Wirral Borough Council in accordance with Part II of the Audit Commission Act 1998 and for no other purpose, as set out in paragraph 48 of the Statement of Responsibilities of Auditors and Audited Bodies published by the Audit Commission in March 2010.

### Respective responsibilities of the Chief Financial Officer and auditor

As explained more fully in the Statement of the Chief Financial Officer’s Responsibilities, the Chief Financial Officer is responsible for the preparation of the Authority’s Statement of Accounts, which includes the pension fund financial statements, in accordance with proper practices as set out in the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom, and for being satisfied that they give a true and fair view. My responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require me to comply with the Auditing Practices Board’s Ethical Standards for Auditors.

### Scope of the audit of the financial statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the fund's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Chief Financial Officer; and the overall presentation of the financial statements. In addition, I read all the financial and non-financial information in the explanatory foreword and the annual report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my report.

### **Opinion on financial statements**

In my opinion the pension fund's financial statements:  
give a true and fair view of the financial transactions of the pension fund during the year ended 31 March 2012 and the amount and disposition of the fund's assets and liabilities as at 31 March 2012, other than liabilities to pay pensions and other benefits after the end of the scheme year; and  
have been properly prepared in accordance with the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom.

### **Opinion on other matters**

In my opinion, the information given in the explanatory foreword and the content of the Annual Report for the financial year for which the financial statements are prepared is consistent with the financial statements.

# Appendix 2 – Draft independent Auditor’s report for the Pension Fund Annual Report

---

## DRAFT INDEPENDENT AUDITOR’S REPORT TO THE MEMBERS OF WIRRAL BOROUGH COUNCIL

### Opinion on the pension fund accounting statements

I have audited the pension fund financial statements for the year ended 31 March 2012 under the Audit Commission Act 1998. The pension fund financial statements comprise the Fund Account, the Net Assets Statement and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom 2011/12.

This report is made solely to the members of Wirral Borough Council in accordance with Part II of the Audit Commission Act 1998 and for no other purpose, as set out in paragraph 48 of the Statement of Responsibilities of Auditors and of Audited Bodies published by the Audit Commission in March 2010.

### Respective responsibilities of the Chief Financial Officer and auditor

As explained more fully in the Statement of the Chief Financial Officer’s Responsibilities, the Chief Financial Officer is responsible for the preparation of the pension fund’s financial statements and for being satisfied that they give a true and fair view. My responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require me to comply with the Auditing Practices Board’s Ethical Standards for Auditors.

### Scope of the audit of the financial statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting

policies are appropriate to the fund's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Chief Financial Officer; and the overall presentation of the financial statements. In addition, I read all the financial and non-financial information in the annual report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my report.

### **Opinion on financial statements**

In my opinion the pension fund's financial statements:

- give a true and fair view of the financial transactions of the pension fund during the year ended 31 March 2012 and the amount and disposition of the fund's assets and liabilities as at 31 March 2012; and
- have been prepared properly in accordance with the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom 2011/12.

### **Opinion on other matters**

In my opinion, the information given in the annual report for the financial year for which the financial statements are prepared is consistent with the financial statements.

Michael Thomas  
District Auditor

Aspinall House  
Aspinall Close  
Horwich  
Bolton  
BL6 6QQ

September 2012

# Appendix 3 – Corrected errors

I identified the following errors during the audit which management have addressed in the revised financial statements.

| Item of account                                    | Nature of error   | Fund Account |           | Net Assets Statement |           |
|--|---|--------------|-----------|----------------------|-----------|
|  |   | Dr £'000s    | Cr £'000s | Dr £'000s            | Cr £'000s |
| Net assets statement - Unquoted investments        | Overstatement of unquoted investments through use of incorrect currency conversion rates. | 3,279        |           |                      | 3,279     |
| Fund manager expenses                              | Understatement of Fund manager expenses.  | 188          |           |                      | 188       |
| Fund account (& note 6) - Contributions receivable | Overstatement of employee's contributions, understatement of employer's contributions.    | 743          | 743       |                      |           |
| Note 11 - Investment income                        | Dividend income incorrectly classified as interest on short term cash deposits.           | 553          |           |                      | 553       |
| Note 11 - Investment income                        | Investment management fee credit incorrectly classified as investment income.             | 3,687        |           |                      | 3,687     |
| Note 13 (a)  | Reclassification of UK quoted equities to overseas quoted equities.                       |              |           | 12,183               | 12,183    |
| Accounting policies                                | Revision and enhancement of accounting policies in a number of                            |              |           |                      |           |



|   | Fund Account | Net Assets Statement |
|---|--------------|----------------------|
| <p>areas. Specifically:</p> <ul style="list-style-type: none"> <li>■ Inclusion of an accounting policy for treatment of income for pooled investments;</li> <li>■ Inclusion of policy on movement in the net market value of investments;</li> <li>■ Inclusion of policy relating to tax on fund expense items;</li> <li>■ Inclusion of policy on financial liabilities;</li> <li>■ Enhanced narrative of policy for transfers to and from other schemes;</li> <li>■ Enhancement of the basis for estimates to disclosure inherent uncertainties and judgement used in the basis of the valuation estimates for unquoted investments;</li> <li>■ Enhanced policy for costs related to pooled investment vehicles; and</li> <li>■ Enhanced policy for property valuation.</li> </ul> |              |                      |
| <p>Accounting policies</p> <p>Removal of a note on prior period adjustments from within accounting policies. No prior period adjustments have been applied in 2011/12.</p>  |              |                      |

|  | Fund Account   | Net Assets Statement |
|--|--|----------------------|
| Fund account - Contributions receivable            | Overstatement of £922K of contributions income has been recorded in respect of 2011-12 which relates to 2010-11.                           |                      |
| Note 13 - Investments                              | Removal of purchases and sales of short term cash deposits.  |                      |
| Note 10 – Administration expenses                  | Addition of an explanatory note.   |                      |
| Note 6 contribution income                         | Deficit funding relating to magistrates courts disclosed as £6.4 million. Should be £1.4 million.  |                      |
| Statement of the consulting actuary                | Fund deficit was incorrectly recorded as £1400 million. Actuary to provide a note stating £1310 million.                                   |                      |
| Note 14a – classification of financial instruments | £12,251K financial liabilities at amortised cost incorrectly recorded as loans and receivables.  |                      |
| Note 21 - Related Party Transactions               | Revision to the key management personnel table following updated guidance. Enhancement and revision of some existing text within the note. |                      |

# Appendix 4 – Draft letter of management representation

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## Merseyside Pension Fund - Audit for the year ended 31/03/2012

I confirm to the best of my knowledge and belief, having made appropriate enquiries of other directors and officers of Merseyside Pension Fund and Wirral Borough Council, the following representations given to you in connection with your audit of the Pension Fund's financial statements for the year ended 31/03/2012.

### **Compliance with the statutory authorities**

I have fulfilled my responsibility under the relevant statutory authorities for preparing the financial statements in accordance with the Accounts and Audit (England) Regulations 2011 and the Code of Practice on Local Authority Accounting in the United Kingdom which give a true and fair view of the financial position and financial performance of the Pension Fund, for the completeness of the information provided to you, and for making accurate representations to you.

### **Supporting records**

I have made available all relevant information and access to persons within the Pension Fund and Wirral Borough Council for the purpose of your audit. I have properly reflected and recorded in the financial statements all the transactions undertaken by the Pension Fund.

### **Internal control**

I have communicated to you all deficiencies in internal control of which I am aware.

### **Irregularities**

I acknowledge my responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud or error.

I also confirm that I have disclosed:

- my knowledge of fraud, or suspected fraud, involving either management, employees who have significant roles in internal control or others where fraud could have a material effect on the financial statements;

- my knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, analysts, regulators or others; and
- the results of our assessment of the risk the financial statements may be materially misstated as a result of fraud.

**Law, regulations, contractual arrangements and codes of practice**

I have disclosed to you all known instances of non-compliance, or suspected non-compliance with laws, regulations and codes of practice, whose effects should be considered when preparing financial statements.

Other than the breach of regulations identified and reported in Table 3, transactions and events have been carried out in accordance with law, regulation or other authority. The Pension Fund has complied with all aspects of contractual arrangements that could have a material effect on the financial statements in the event of non-compliance.

All known actual or possible litigation and claims, whose effects should be considered when preparing the financial statements, have been disclosed to the auditor and accounted for and disclosed in accordance with the applicable financial reporting framework.

**Accounting estimates including fair values**

I confirm the reasonableness of the significant assumptions used in making the accounting estimates, including those measured at fair value.

For accounting estimates relating to Private Equity, Hedge Funds and Investment Property valuations, I confirm:

- the appropriateness of the measurement method, including related assumptions and models, and the consistency in application of the method;
- the assumptions appropriately reflect management's intent and ability to carry out specific courses of action on behalf of the Pension Fund, where relevant to the accounting estimates and disclosures;
- the disclosures relating to the accounting estimate are complete and appropriate under the Code; and
- that no subsequent event requires the Pension Fund to adjust the accounting estimate and related disclosures included in the financial statements.

**Related party transactions**

I confirm that I have disclosed the identity of the Pension Fund's related parties and all the related party relationships and transactions of which I am aware. I have appropriately accounted for and disclosed such relationships and transactions in accordance with the requirements of the Code.

**Subsequent events**

I have adjusted for or disclosed in the financial statements all relevant events subsequent to the date of the financial statements.

Signed on behalf of Merseyside Pension Fund

I confirm that this letter has been discussed and agreed by the Audit and Risk Management Committee on 19 September 2012.

Signed

Name

Position

Date

# Appendix 5 – Glossary

---

## **Annual Audit Letter**

Letter issued by the auditor to the Pension Fund after the completion of the audit that summarises the audit work carried out in the period and significant issues arising from auditors' work.

## **Annual Governance Report**

The auditor's report on matters arising from the audit of the financial statements presented to those charged with governance before the auditor issues their opinion.

## **Audit of the accounts**

The audit of the accounts of an audited body comprises all work carried out by an auditor under the Code to meet their statutory responsibilities under the Audit Commission Act 1998.

## **Audited body**

A body to which the Audit Commission is responsible for appointing the external auditor.

## **Auditing Practices Board (APB)**

The body responsible in the UK for issuing auditing standards, ethical standards and associated guidance to auditors. Its objectives are to establish high standards of auditing that meet the developing needs of users of financial information and to ensure public confidence in the auditing process.

## **Auditing standards**

Pronouncements of the APB that contain basic principles and essential procedures with which auditors must comply, except where otherwise stated in the auditing standard concerned.

## **Auditor(s)**

Auditors appointed by the Audit Commission.

---

## **Audit Commission**

Annual governance report

**Code (the)**

The Code of Audit Practice for local government bodies issued by the Audit Commission and approved by Parliament.

**Commission (the)**

The Audit Commission for Local Authorities and the National Health Service in England.

**Ethical Standards**

Pronouncements of the APB that contain basic principles relating to independence, integrity and objectivity that apply to the conduct of audits and with which auditors must comply, except where otherwise stated in the standard concerned.

**Financial statements**

The annual statement of accounts that the Pension Fund is required to prepare, which report the financial performance and financial position of the Pension Fund in accordance with the Accounts and Audit (England) Regulations 2011 and the Code of Practice on Local Authority Accounting in the United Kingdom.

**Internal control**

The whole system of controls, financial and otherwise, that the Pension Fund establishes to provide reasonable assurance of effective and efficient operations, internal financial control and compliance with laws and regulations.

**Materiality**

The APB defines this concept as ‘an expression of the relative significance or importance of a particular matter in the context of the financial statements as a whole. A matter is material if its omission would reasonably influence the decisions of an addressee of the auditor’s report; likewise a misstatement is material if it would have a similar influence. Materiality may also be considered in the context of any individual primary statement within the financial statements or of individual items included in them. Materiality is not capable of general mathematical definition, as it has both qualitative and quantitative aspects’.

The term ‘materiality’ applies only to the financial statements. Auditors appointed by the Commission have responsibilities and duties under statute, as well as their responsibility to give an opinion on the financial statements, which do not necessarily affect their opinion on the financial statements.

### **Pension Fund Annual Report**

The annual report, including financial statements, that the Pension Fund must publish under Regulation 34 of the Local Government Pension Scheme (Administration) Regulations 2008.

### **Significance**

The concept of 'significance' applies to these wider responsibilities and auditors adopt a level of significance that may differ from the materiality level applied to their audit of the financial statements. Significance has both qualitative and quantitative aspects.

### **Those charged with governance**

Those entrusted with the supervision, control and direction of the Pension Fund. This term includes the members of the Authority, the Pension's Committee and the Audit and Risk Management Committee.



# Appendix 6 – Action plan

## Recommendations

### Recommendation 1

Ensure that the Pension Fund's authorised contacts list is updated.

#### Responsibility

#### Priority

#### Date

#### Comments

### Recommendation 2

Implement robust controls for monitoring and reporting against the investment limits set in the Statement of Investment Principals, to ensure that future breaches of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 do not occur.

#### Responsibility

#### Priority

#### Date

#### Comments

### Recommendation 3

Review the current reporting arrangements for credit and liquidity risk, to enable fully compliant reporting in line with the Code of Practice on Local Authority Accounting in the United Kingdom.

#### Responsibility

#### Priority

**Date**

**Comments**

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**September 2012**

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# Annual governance

# report

Wirral Council

Audit 2011/12



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# Key messages

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**This report summarises the findings from the 2011/12 audit which is substantially complete. It includes the messages arising from my audit of your financial statements and the results of the work I have undertaken to assess your arrangements to secure value for money in your use of resources.**

## **Financial statements**

Subject to satisfactory completion of a number of outstanding issues, I intend to issue an audit report including an unqualified opinion on the financial statements (including the Merseyside Pension Fund statements) 2011/12. As at 3 September 2012 there are two non-material audit adjustments that are being amended by management. One of these adjustments increases the overall general fund balance by £319k.

I received good quality statements in accordance with the statutory deadline which shows evidence of quality assurance and significantly better closedown arrangements than in previous years. I also received good quality working papers on the first day of the audit enabling my team to select samples for further testing promptly and progress the audit efficiently.

I identified significant weaknesses in your systems of internal control in respect of assets, accounts payable and journals. Improvements have been made in the controls over a number of asset types this year, but some issues still remain,

As part of my audit report I am required to report 'Matters on which I report by exception'. As at 3 September I plan to report two such matters:

- in my opinion the annual governance statement presented for audit does not reflect compliance with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007;
- I issued a report in the public interest in respect of the award and contract management of your Highways and Engineering Services contract under section 8 of the Audit Commission Act 1998 on 8 June 2012.

## **Value for money (VFM)**

I expect to conclude that you have not made proper arrangements to secure economy, efficiency and effectiveness in your use of resources and issue a report by exception on your arrangements for good governance and risk management and internal control. The key issues that have

contributed to my adverse conclusion have been acknowledged by the Council in its reports to the Local Government Association (LGA) Improvement Board, in the Improvement Plan and in the latest financial monitoring reports to Cabinet:

- Securing financial resilience – the Council did not have robust systems and processes to manage effectively financial risks and opportunities, and to secure a stable financial position that enables it to continue to operate for the foreseeable future. In particular there were weaknesses in leadership and financial governance that have diverted action from delivering improvement. The Council continues to face a number of significant financial challenges most notably developing robust plans to address the projected shortfall of around £100 million for 2012 – 2015, the recurrent overspend in Adult Social Services and the 2012/13 projected overspend at June 2012.
- Securing economy, efficiency and effectiveness – the Council did not prioritise its resources within tighter budgets, for example by achieving cost reductions and by improving efficiency and productivity. There was a lack of clarity about the Council's strategic priorities due to the changes in leadership and the Corporate Plan resulting in a lack of a strategic approach to challenging spend and considering how spending matched the priorities of the Council. Cost reduction plans were not achieved and there was limited information to demonstrate that there was an increase in productivity and better output from more limited resources, most notably in respect of the Highways and Engineering Services contract.
- Report by exception - The Council has yet to address the corporate governance weaknesses which have been repeatedly identified. In addition there were weaknesses in corporate arrangements for risk management, compliance with policies, procedures and aspects of internal control.

## Certificate

Subject to satisfactory completion of a number of outstanding issues I would like to issue my certificate by 28 September 2012. My draft Audit report currently refers to a possible delay in the certificate due to a number of outstanding matters. I am endeavouring to resolve these matters as a matter of urgency.



# Before I give my opinion and conclusion

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**My report includes only matters of governance interest that have come to my attention in performing my audit. I have not designed my audit to identify all matters that might be relevant to you.**

## **Independence**

I can confirm that I have complied with the Auditing Practices Board's Ethical Standards for auditors, including ES 1 (revised) - Integrity, Objectivity and Independence.

I am aware of the following relationship that might constitute a threat to independence and that I am required to report to you. I have therefore put in place the following safeguard to reduce the threat.

Table 1: Threats and safeguards

| Threat  | Safeguard  |
|---|--|
| The son of a member of the audit team works at the Council in the Insurance Section in Finance. | The team member will not carry out any work on payroll or insurance. |

## **Non-audit work**

During the year the Audit Commission's Audit Practice undertook non-audit work for the Council in respect of:

- attending the LGA Improvement Board; and
- providing information for the Council's value for money report to members following the qualification of the 2010/11 vfm conclusion.

### **I ask the Audit and Risk Management Committee to:**

- consider the matters raised in the Pension Fund Annual Governance Report and the recommendation of the Pensions Committee; note the adjustments, approve the letter of representation and agree your response to the action plan;
- consider the matters raised and take note of the adjustments to the financial statements included in this report (appendices 2 and 3);
- approve the letter of representation (appendix 4), on behalf of the Council before I issue my opinion and conclusion; and
- agree your response to the proposed action plan (appendix 6).

# Financial statements

---

**The Authority's financial statements and annual governance statement are important means by which the Authority accounts for its stewardship of public funds. As elected members you have final responsibility for these statements. It is important that you consider my findings before you adopt the financial statements and the annual governance statement.**

## **Opinion on the financial statements**

Subject to satisfactory clearance of outstanding matters, I plan to issue an audit report including an unqualified opinion on the financial statements. Appendix 1 contains a copy of my draft audit report.

### **Merseyside Pension Fund**

As Wirral Council is the administering authority for the Merseyside Pension Fund (MPF), the Fund's accounts form part of the Council's statement of accounts. As at 3 September 2012 the audit of the Pension Fund is substantially complete and there is a separate Annual Governance Report (AGR) that is being considered by the Pensions Committee on 18 September and the Audit and Risk Management Committee on 19 September. The Pension Fund AGR also states that subject to satisfactory clearance of outstanding matters on the MPF accounts, I plan to issue an unqualified opinion on the financial statements. Members need to consider the issues in the Pension Fund AGR prior to considering and approving the overall statement of accounts.

### **Outstanding matters**

As at 3 September I still need to complete the following audit procedures:

- final review of leases, exit packages, related party transactions and tangible fixed assets;
- final check of the amended statements;
- completion of the review of the Whole of Government Accounts (WGA); and
- completion of review of the amended Annual Governance Statement (AGS).

## **Uncorrected errors**

Subject to the completion of outstanding audit work there are no material or non-trivial uncorrected errors in the 2011/12 statement of accounts to report to Members.

My 2010/11 audit found that there were two uncorrected errors of £6m in the Comprehensive Income and Expenditure Statement (CIES) which net each other off and have no impact on balances carried forward. The Council has been unable to correct these items and they remain an uncorrected error in the comparators for the current year statements. This item is detailed at Appendix 2. I have asked you to confirm that the error has no impact on the 2011/12 figures in your letter of representation at appendix 4.

## **Corrected errors**

I identified two non-trivial items that officers have corrected in the main financial statements. The correction of an overstated provision has resulted in the recognition of an additional contingent liability and a release of £319k from provisions to increase the General Fund balance by the same amount.

The corrected non-trivial errors are detailed at Appendix 3.

## **Significant risks and my findings**

I reported to you in my January 2012 Audit Plan the significant risks that I identified relevant to my audit of your financial statements. In Table 2 I report to you my findings against each of these risks.

Table 2: **Risks and findings**

| Risk  | Finding  |
|---|--|
| <p>Accuracy and consistency of financial statements and working papers</p> <p>In 2010/11 and in previous years:</p> <ul style="list-style-type: none"> <li>■ the accounts approved by the Deputy Chief Executive and Director of Finance and presented for audit contained a number of material and other errors;</li> <li>■ I identified a number of areas where policies were not complied with and financial statements disclosures were not consistent within the accounts;</li> <li>■ I received a number of versions of statements to audit.</li> </ul> <p>In 2010/11, the deadline for approval of the accounts by the Deputy Chief Executive and Director of Finance and the Council's plan for the restatement to IFRS were not met. Working papers were not presented for audit to the deadline and some were not to standard.</p> <p>These factors all led to difficulties during the audit that impacted on our timetable, resources and reporting to members and put at risk the issue of the Auditor's Report and the publishing of the audited accounts by the statutory deadline.</p> | <p>I reviewed:</p> <ul style="list-style-type: none"> <li>■ the design and implementation of the management controls you put in place to produce the statement of accounts including the Council's closedown plans;</li> <li>■ achievement of the timetable for closedown;</li> <li>■ your response to action plans in respect of the 2010/11 pre statements report and final opinion memo to officers and the Annual Governance Report presented to members in respect of: <ul style="list-style-type: none"> <li>– Quality assurance arrangements</li> <li>– Working papers</li> <li>– Accuracy of the statements.</li> </ul> </li> </ul> <p>The accuracy and consistency of the financial statements and working papers has improved significantly this year:</p> <ul style="list-style-type: none"> <li>■ The accounts certified by the Acting Director of Finance and presented for audit contained no material errors and only two non-trivial errors;</li> <li>■ Disclosures were more consistent within the accounts;</li> <li>■ I received one pre-audit version of the statements rather than several different versions as in previous years;</li> <li>■ The deadline for certification of the statements was met;</li> <li>■ Working papers were available from the first day of the audit and were of a good standard.</li> </ul> |
| <p>Heritage Assets</p> <p>The 2011/12 Code adopts the requirements of Financial Reporting Standard (FRS) 30 Heritage Assets and also requires retrospective restatement in a number of accounts (1 April 2010 &amp; 31 March 2011). There is a risk</p>   | <p>I evaluated the design and implementation of the management controls you have in place to recognise and value heritage assets. I also carried out testing to check that the Council has accounted for heritage assets in accordance with FRS 30 and the Code and the financial statements are materially stated.</p> <p>I reviewed the identification of heritage assets and verified their existence and Council</p>   |

## Risk

that the Authority may be unable to identify and account for all heritage assets due to previous problems with restatements and the recording of and accounting for assets.

Surplus/deficit on the revaluation of Property Plant and Equipment (PPE) assets disclosed

The pre-audit statements 2010/11 included a material error in the Comprehensive Income and Expenditure Statement (CIES) - Surplus/deficit on the revaluation of Property Plant and Equipment (PPE) assets disclosed.

The audited financial statements included a (non-material) balance of £6m as an unadjusted error on the face of the CIES in respect of the deficit on the revaluation of Property Plant and Equipment (PPE) assets disclosed. The corresponding entries would have been at a number of service expenditure lines. There is a risk that if this is not resolved the balance could be material in 2011/12.

Valuation of property, plant and equipment (PPE)

The Authority is required to value PPE at fair value (with some exceptions). There is a risk that the valuation reported in the financial statements will be materially misstated due to incorrect classification or application of accounting standards, incomplete asset records or lack of timely and quality assured closedown and communication between Finance and Valuers.

Schools

In most local authorities schools are managed through a variety of governance arrangements. The difference in

## Finding

ownership. There are no material items to bring to your attention but I noted that in some cases, for example, there is not a full listing of items that make up the accounting value recorded in the accounts.

I evaluated the design and implementation of the controls you have in place over the use and recognition of capital grants. I carried out testing on the resolution of the £6m unadjusted error from 2010/11 and specific testing on the surplus or deficit on the revaluation of PPE. The unadjusted error from 2010/11 is noted above under 'uncorrected errors' and at appendix 2. It will also need to be referred to in your letter of management representation.

My testing of the 2011/12 Comprehensive Income and Expenditure Statement (CIES) - Surplus/deficit on the revaluation of Property Plant and Equipment (PPE) assets disclosed has not identified any significant issues to bring to your attention.

I reviewed the design and implementation of the controls over identifying assets, establishing estimates, including arrangements for instructing your valuer and controls over information provided to the valuer. I carried out procedures for reliance on the work of the valuer and tests of detail on valuations and associated depreciation calculations. I have noted improvements in the process and the Council's responses to my recommendations last year, but some internal control issues remain as noted in the Weaknesses in Internal Control section below.

I reviewed:

- the design and implementation of the controls and the Authority's consideration of schools and the International Accounting Standard (IAS 16) recognition criteria;

## Risk

those arrangements has implications for the accounting treatment. There may be a risk that the Authority has materially misstated its PPE due to the incorrect inclusion or omission of schools in its balance sheet.

## Finding

■ consistency with the accounting policy. I carried out tests of detail on the accounting treatment of a sample of schools held on the balance sheet and a sample of schools not recognised on the balance sheet against the IAS 16 recognition criteria.

My testing has not identified any significant issues to bring to your attention.

## Significant weaknesses in internal control

It is the responsibility of the Authority to develop and implement systems of internal financial control and to put in place proper arrangements to monitor their adequacy and effectiveness in practice. My responsibility as your auditor is to consider whether the Authority has put adequate arrangements in place to satisfy itself that the systems of internal financial control are both adequate and effective in practice.

I have tested the controls of the Authority only to the extent necessary for me to complete my audit. I am not expressing an opinion on the overall effectiveness of internal control. I have reviewed the Annual Governance Statement (AGS) and in my opinion the statement presented for audit:

- does not reflect compliance with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007; and
- is not consistent with other information that I am aware of from my audit.

My judgement is explained in more detail at 'Matters on which I report by exception' below.

The following weaknesses in internal control are only those I have identified during the audit that are relevant to preparing the financial statements.

Table 3: Internal control issues and my findings

| Description of weakness   | Potential impact  | Management action   |
|---|---|---|
| Assets – some weaknesses remain in the controls over asset verification. The valuer has not recorded specific site visits and consideration of impairment. Improvements have been made in finance team verification work covering the land and building elements of assets and vehicles, plant and equipment. | The Council may not have sufficient controls in place to assure themselves of the accuracy of Property, Plant and Equipment disclosures. For Infrastructure Assets there is a risk of non-compliance with the 2012/13 reporting requirements. | Issues from 2010/11 Annual Governance Report implemented following September 2011, and further recommendations from our interim memo of February 2012 continue to be implemented. |

| Description of weakness   | Potential impact  | Management action   |
|---|---|---|
| <p>Infrastructure assets and historic cost valuation are not fully componentised.</p>   |   |   |
| <p>Accounts payable – my testing of the system found a number of weaknesses in the application and adherence to authorisation controls.</p>   | <p>I was unable to rely on the controls in the system and carried out detailed substantive testing of transactions. My additional testing found no errors in the statements, however the nature of the testing covers only a sample of expenditure and there is a risk the Council is committed to expenditure that has not been authorised in line with standing orders and processes.</p> | <p>Detailed recommendations from my 2011/12 interim report of February 2012 are being implemented in 2012/13.</p>   |
| <p>Journals – my testing found that authorisation processes for journals required strengthening.</p>  | <p>My testing of material journals found no errors. However the risk of unauthorised journals or no separation of duties between raising and authorisation is that the accuracy of the main accounting system could be compromised.</p>   | <p>Recommendations to strengthen controls from my interim report of February 2012 are being implemented in 2012/13</p>  |
| <p>Related Party declarations – Six members and two senior officers did not complete the declarations (One member was in respect of the Pension Fund).</p>  | <p>The Council may not be aware of related party relationships that should be disclosed</p>   | <p>Management responded to my recommendation from 2010-11 and all exiting members completed a declaration, apart from one Pensions Committee member. The five incomplete member returns are from current members.</p> |
| <p>The following item has been identified in the Merseyside Pension Fund Annual Governance Report –</p> <ul style="list-style-type: none"> <li>■ An ex employee of the Fund is still listed as authorised to receive correspondence from external bodies, for example, Fund Managers. This employee has not been</li> </ul> | <p>The Merseyside Pension Fund Annual Governance Report highlights the potential impact of this weakness.</p>   | <p>The Merseyside Pension Fund Annual Governance Report includes recommendations and an action plan.</p>  |



| Description of weakness  | Potential impact   | Management action |
|--|--|-------------------|
| working at MPF for a period of 3 years.  |  |                   |
| <b>Recommendation</b>  |  |                   |
| <b>R1</b> Improve controls for property plant and equipment and ensure infrastructure asset records are sufficient for the 2012/13 reporting requirements.   |  |                   |
| <b>R2</b> Ensure weaknesses in the application and adherence to the procedures for the authorisation controls in the accounts payable system are addressed.  |  |                   |
| <b>R3</b> Strengthen segregation of duties and authorisation processes for journals.   |  |                   |
| <b>R4</b> Ensure all officers and members complete declarations in respect of related party transactions.  |  |                   |
| <b>Other matters</b>   |  |                   |
| I am required to communicate to you significant findings from the audit and other matters that are significant to your oversight of the Authority's financial reporting process including the following.   |  |                   |
| <ul style="list-style-type: none"> <li>■ Qualitative aspects of your accounting practices</li> <li>■ Matters specifically required by other auditing standards to be communicated to those charged with governance. For example, issues about fraud, compliance with laws and regulations, external confirmations and related party transactions.</li> <li>■ Other audit matters of governance interest</li> </ul> <p>I wish to report other matters as noted below:</p> |  |                   |
| Table 4: <b>Other matters</b>  |  |                   |
| Issue  | Finding  |                   |
| Qualitative aspects of your accounting practices - Disclosure notes.   | I identified a small number of errors (18) in the disclosure notes to the accounts including one material adjustment (£57,490k) to a prior year comparator in note 17. |                   |

| Issue   | Finding  |
|---|--|
| <p>Compliance with laws and regulations – as reported in my Merseyside Pension Fund Annual Governance Report.</p> <p>Breach of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 in regards to investment limits.</p> | <p>The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (which came into force on 1 January 2010) set out a required process for Pension Funds to follow when planning to increase investment limits. In 2011/12 the Pension Fund exceeded the limits as set out in their current Statement of Investment Principals (SIP), without following the proper procedure as set out in the regulations.</p> |

|   |  |
|---|--|
| <p>Other audit matters of governance interest</p> | <p>I discussed a number of governance issues with management and those charged with governance during the year. This included issues reported in my:</p> <ul style="list-style-type: none"> <li>■ Public Interest Report in June 2012 regarding the award and contract management of the Highways and Engineering Services contract;</li> <li>■ Summary report on grant claims and returns;</li> <li>■ Follow-up review of Internal Audit's work on gifts, hospitality and conflicts of interest.</li> </ul> <p>I have also reviewed the issues included in your Annual Governance Statement, various independent reports to the Council and reports provided to the Improvement Board and Cabinet, most notably the draft Improvement Plan.</p> |
|---|--|

### Matters on which I report by exception

As part of my audit report I am required to report 'Matters on which I report by exception'. As at 3 September I plan to report two such matters:

- in my opinion the annual governance statement as presented for audit does not reflect compliance with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007;
- I issued a report in the public interest on 8 June 2012 in respect of the award and contract management of the Highways and Engineering Services contract under section 8 of the Audit Commission Act 1998.

### Annual governance statement (AGS)

In my opinion, the annual governance statement as presented for audit does not comply with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007 because it does not adequately or accurately describe the governance framework and review of effectiveness nor address the weaknesses in the internal control environment highlighted in the Council's Improvement Plan.

The AGS complies with the format of the CIPFA/SOLACE Framework. My review concluded however that the content of the AGS was generally not in the appropriate sections of the report and some statements were factually incorrect or not consistent with my knowledge of the Council.

The AGS as presented for audit was not up to date nor complete and did not accurately reflect the position of the Council as it was at February/March 2012 nor as it was at the end of June 2012. The version presented for audit was prepared in Feb/Mar 2012 but should have represented the position at the date the accounts were certified on 29 June 2012. The AGS will also need to be updated closer to the 30 September 2012 deadline to recognise any events and/or reviews of arrangements where they are indicative of the position at the Council during the 2011/12 year to 31 March 2012.

Internal Audit carried out a review of effectiveness and confirmed that appropriate evidence supports the assertions in the statements. However, there are gaps and inconsistencies and the statements in the AGS at section 5 (review of effectiveness) are generally descriptions of arrangements rather than outcomes noted from the review of effectiveness. The Chief Internal Auditor's opinion in his annual report to the Audit and Risk Management Committee in itself is contradictory and is not consistent with the AGS.

I have now been provided with an updated version of the AGS that I am currently reviewing.

#### Recommendation

**R5** Revise the Annual Governance Statement (AGS) to ensure it:

- reflects compliance with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007;
- is consistent with other information on governance that is available to the Council.

#### Highways and Engineering Services report in the public interest

On 8 June 2012 I issued a report in the public interest under section 8 of the Audit Commission Act 1998 in respect of the award and contract management of the Council's Highways and Engineering Services Contract. My report included a number of recommendations in relation to the Council's corporate governance arrangements and was considered by the Council on 16 July 2012. As at 3 September 2012 I have yet to receive a formal response to the report. The Audit Commission Act 1998 requires a response as soon as is practical after the Council meeting. The response also needs to be publicised in the local press.

#### Recommendation

**R6** Ensure the weaknesses identified in the Highways and Engineering Services report in the public interest are addressed and the Council's response as required by the Audit Commission Act 1998 is completed as a matter of urgency.

### **Whole of Government Accounts**

Alongside my work on the financial statements, I also review and report to the National Audit Office on your Whole of Government Accounts (WGA) return. As at 3 September 2012 I have not completed the procedures specified by the National Audit Office. I expect to receive your amended financial statements and amendments for the WGA return by 13 September 2012 in order to complete my report by 28 September 2012.

# Value for money

**I am required to conclude whether the Authority put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources. This is the value for money conclusion.**

I assess your arrangements against the two criteria specified by the Commission. In my January 2012 Audit Plan I reported to you the significant risks that were relevant to my conclusion. I have set out below my conclusion on the two criteria, including the findings of my work addressing each of the risks I identified.

I have identified weaknesses that prevent me from being satisfied that in all significant respects Wirral Borough Council put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ending 31 March 2012. I include my draft adverse conclusion at Appendix 1 and set out the issues below.

Table 5: Value for money conclusion criteria and my findings

| Criteria   | Findings  |
|--|---|
| <p>1. Financial resilience</p> <p>The organisation has proper arrangements in place to secure financial resilience.</p> <p>Focus for 2011/12:</p> <p>The organisation has robust systems and processes to manage effectively financial risks and opportunities, and to secure a stable financial position that enables it to continue to operate for the foreseeable future.</p> <p><b>Audit Plan (Jan 2012) risk</b></p> <p>The Council has identified significant pressures within</p> | <p>I identified that the Council does not have robust systems and processes to manage effectively financial risks and opportunities, and to secure a stable financial position that enables it to continue to operate for the foreseeable future:</p> <ul style="list-style-type: none"> <li>■ There were weaknesses in leadership and financial governance that have diverted action from delivering improvement. This is acknowledged in the Council's draft Improvement Plan and Annual Governance Statement.</li> <li>■ The Corporate Plan has been subject to constant change impacting adversely on the Council's ability to plan and prioritise over the medium to longer term.</li> <li>■ The Corporate Plan is not underpinned by a robust medium term financial plan that clearly sets out plans to address the projected shortfall of around £100 million for 2012 – 2015;</li> <li>■ There has been regular use of reserves to fund recurrent expenditure as well as</li> </ul> |

| Criteria   | Findings  |
|--|---|
| <p>the Children and Young People's and Adult Social Services revenue budgets for 2011/12. Achieving the savings identified in the Change Programme and implementing robust plans for bridging the current budget shortfall for 2012/13 of £18.7m are fundamental to securing financial resilience and economy, efficiency and effectiveness.</p> <p>2. Securing economy efficiency and effectiveness</p> <p>The organisation has proper arrangements for challenging how it secures economy, efficiency and effectiveness.</p> <p>Focus for 2011/12:</p> <p>The organisation is prioritising its resources within tighter budgets, for example by achieving cost reductions and by improving efficiency and productivity.</p> <p><b>Audit Plan (Jan 2012) risk</b></p> <p>In 2010/11 I concluded that the Council was not able to provide information on activity and performance to determine whether it is receiving better value for the money spent in respect of the Highways and Engineering contract.</p> | <p>weaknesses in forecasting capital expenditure.</p> <ul style="list-style-type: none"> <li>■ The Council did not secure robust financial control and continues to face a number of financial challenges most notably a recurrent overspend in Adult Social Services and a projected overspend of £17m at month three of 2012/13.</li> </ul> <p>Without robust systems and processes, financial risks and opportunities may not be managed effectively and a secure financial position may not be secured for the foreseeable future.</p> <p>I identified that the Council is not prioritising its resources within tighter budgets, for example by achieving cost reductions and by improving efficiency and productivity:</p> <ul style="list-style-type: none"> <li>■ There is a lack of clarity about the Council's strategic priorities due to the changes in leadership and the Corporate Plan resulting in a lack of a strategic approach to challenging spend and considering how spending matches the priorities of the Council;</li> <li>■ Performance management arrangements were reviewed during the year but remain inadequate. The responsibility for the strategic change programme has continued to move between departments, was not linked to the wider savings programme and did not deliver as planned;</li> <li>■ There is inadequate information for decision-making and partnership arrangements need strengthening.</li> <li>■ There was limited information to demonstrate that there was an increase in productivity and better output from more limited resources, most notably in respect of the Highways and Engineering Services contract. A third of corporate indicators and corporate projects did not meet targets or were not delivered as planned.</li> </ul> <p>Without clear prioritising of resources within tighter budgets, cost reductions and improved efficiency and productivity may not be achieved</p> <p>A number of governance and internal control issues are impacting on the efficiency and effectiveness of the Council:</p> <ul style="list-style-type: none"> <li>■ Promoting and demonstrating the principles of good governance: The Council has yet to address the corporate governance weaknesses which have been repeatedly identified</li> </ul> |
| <p><b>Proper arrangements</b></p> <p>The Audit Commission's guidance also requires me to report by exception on any other significant additional matters that come to my attention and which I consider</p>  |   |

## Criteria

to be relevant to proper arrangements to secure economy, efficiency and effectiveness in the use of resources.

### **Audit Plan (Jan 2012) risk**

In 2010/11 I identified a number of governance and internal control issues that are impacting on the efficiency and effectiveness of the Council.

## Findings

in respect of key issues such as whistleblowing, conflicts of interest, compliance with procedures, risk management, Internal Audit and providing value for money. In addition gifts and hospitality records were not complete and there was a high incidence of non-compliance with procedures. Without good governance, risk increases and priorities may not be achieved.

- Managing risks and maintaining a sound system of internal control: I identified weaknesses in corporate arrangements for risk management, compliance with policies, procedures and internal control. There were not adequate and effective arrangements for assurance of the systems of internal control and I identified significant internal control weaknesses in respect of the control and management of, for example, assets and accounts payable. Without sound arrangements risks cannot be managed to a reasonable level and resources may not be used effectively to deliver value for money.

## Recommendation

**R7** Ensure the weakness identified in respect of financial resilience, securing economy efficiency and effectiveness and proper arrangements are addressed.

# Certificate

---

**I am required to certify that I have completed the audit of the accounts of the Council in accordance with the requirements of the Audit Commission Act 1998 and the Code of Audit Practice issued by the Audit Commission.**

Subject to satisfactory completion of a number of outstanding issues I would like to issue my certificate by 28 September 2012. The outstanding issues are:

- Completion of my review and report to the National Audit Office on your Whole of Government Accounts (WGA) return;
- Your responses to issues that have been raised by local electors;
- Your response to my report on Gifts, hospitality and conflicts of interest;
- Your response to my Report in the Public Interest on the Highways and Engineering Contract.

My draft Audit report currently refers to a possible delay in the certificate due to the outstanding matters.



# Fees

## I reported my planned audit fee in the January 2012 Audit Plan.

I have agreed with the Acting Director of Finance a revision to the fee because of the matters highlighted in this report.

Table 6: Fees

|  | Planned fee 2011/12 (£) | Expected fee 2011/12 (£) |
|--|-------------------------|--------------------------|
| Audit (additional expected fee of £8,000* for the number of questions and issues raised by local electors and Council) | 352,800                 | 360,800*                 |
| Claims and returns (decrease resulting from a reduction in the number of claims requiring certification)               | 100,093                 | 85,000*                  |
| Non-audit work – LGA Improvement Board and Council VFM report to members   | None planned            | 23,700*                  |
| <b>Total</b>   | <b>452,893</b>          | <b>469,500*</b>          |

\* estimate

The Audit Commission has paid a rebate of £28,224 to reflect attaining internal efficiency savings, reducing the net amount payable to the Audit Commission to **£441,256**.

# Appendix 1 – Draft independent auditor’s report

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## **DRAFT - INDEPENDENT AUDITOR’S REPORT TO THE MEMBERS OF WIRRAL BOROUGH COUNCIL**

### **Opinion on the Authority financial statements**

I have audited the financial statements of Wirral Borough Council for the year ended 31 March 2012 under the Audit Commission Act 1998. The financial statements comprise the Movement in Reserves Statement, the Comprehensive Income and Expenditure Statement, the Balance Sheet, the Cash Flow Statement, and Collection Fund and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom 2011/12.

This report is made solely to the members of Wirral Borough Council in accordance with Part II of the Audit Commission Act 1998 and for no other purpose, as set out in paragraph 48 of the Statement of Responsibilities of Auditors and Audited Bodies published by the Audit Commission in March 2010.

### **Respective responsibilities of the Chief Financial Officer and auditor**

As explained more fully in the Statement of the Chief Financial Officer’s Responsibilities, the Chief Financial Officer is responsible for the preparation of the Statement of Accounts, which includes the financial statements, in accordance with proper practices as set out in the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom, and for being satisfied that they give a true and fair view. My responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require me to comply with the Auditing Practices Board’s Ethical Standards for Auditors.

### **Scope of the audit of the financial statements**

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Authority’s circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Chief Financial Officer; and the overall presentation of the financial statements. In addition, I read all the

financial and non-financial information in the explanatory foreword to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my report.

### **Opinion on financial statements**

In my opinion the financial statements:

- give a true and fair view of the financial position of Wirral Borough Council as at 31 March 2012 and of its expenditure and income for the year then ended; and
- have been prepared properly in accordance with the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom 2011/12.

### **Opinion on other matters**

In my opinion, the information given in the explanatory foreword for the financial year for which the financial statements are prepared is consistent with the financial statements.

### **Matters on which I report by exception**

I report to you if:

- in my opinion the annual governance statement does not reflect compliance with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007;
- I issue a report in the public interest under section 8 of the Audit Commission Act 1998;
- I designate under section 11 of the Audit Commission Act 1998 any recommendation as one that requires the Authority to consider it at a public meeting and to decide what action to take in response; or
- I exercise any other special powers of the auditor under the Audit Commission Act 1998.

### **Exception reports**

#### **Auditor's responsibilities**

##### **Annual governance statement**

I report to you if, in my opinion, the annual governance statement does not reflect compliance with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007.

In my opinion, the annual governance statement does not comply with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007 because it does not adequately or accurately describe the governance framework and review of effectiveness nor address the weaknesses in the internal control environment highlighted in the Authority's Improvement Plan..

### **Report in the public interest under section 8 of the Audit Commission Act 1998**

I have a duty under the Audit Commission Act 1998 to consider whether, in the public interest, to report on any matter that comes to my attention in the course of the audit in order for it to be considered by the Authority concerned or brought to the attention of the public.

On 8 June 2012 I issued a report in the public interest under section 8 of the Audit Commission Act 1998 on the subject of weaknesses in the Authority's corporate governance arrangements. My report included a number of recommendations to the Authority.

### **Opinion on the pension fund financial statements**

I have audited the pension fund financial statements for the year ended 31 March 2012 under the Audit Commission Act 1998. The pension fund financial statements comprise the Fund Account, the Net Assets Statement and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom 2011/12.

This report is made solely to the members of Wirral Borough Council in accordance with Part II of the Audit Commission Act 1998 and for no other purpose, as set out in paragraph 48 of the Statement of Responsibilities of Auditors and Audited Bodies published by the Audit Commission in March 2010.

### **Respective responsibilities of the Chief Financial Officer and auditor**

As explained more fully in the Statement of the Chief Financial Officer's Responsibilities, the Chief Financial Officer is responsible for the preparation of the Authority's Statement of Accounts, which includes the pension fund financial statements, in accordance with proper practices as set out in the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom, and for being satisfied that they give a true and fair view. My responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require me to comply with the Auditing Practices Board's Ethical Standards for Auditors.

### **Scope of the audit of the financial statements**

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the fund's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Chief Financial Officer; and the overall presentation of the financial statements. In addition, I read all the financial

and non-financial information in the explanatory foreword to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my report.

### **Opinion on financial statements**

In my opinion the pension fund's financial statements:

- give a true and fair view of the financial transactions of the pension fund during the year ended 31 March 2012 and the amount and disposition of the fund's assets and liabilities as at 31 March 2012, other than liabilities to pay pensions and other benefits after the end of the scheme year; and
- have been properly prepared in accordance with the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom.

### **Opinion on other matters**

In my opinion, the information given in the explanatory foreword for the financial year for which the financial statements are prepared is consistent with the financial statements.

## **Conclusion on Authority's arrangements for securing economy, efficiency and effectiveness in the use of resources**

### **Respective responsibilities of the Authority and the auditor**

The Authority is responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources, to ensure proper stewardship and governance, and to review regularly the adequacy and effectiveness of these arrangements.

I am required under Section 5 of the Audit Commission Act 1998 to satisfy myself that the Authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. The Code of Audit Practice issued by the Audit Commission requires me to report to you my conclusion relating to proper arrangements, having regard to relevant criteria specified by the Audit Commission.

I report if significant matters have come to my attention which prevent me from concluding that the Authority has put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources. I am not required to consider, nor have I considered, whether all aspects of the Authority's arrangements for securing economy, efficiency and effectiveness in its use of resources are operating effectively.

### **Scope of the review of arrangements for securing economy, efficiency and effectiveness in the use of resources**

I have undertaken my audit in accordance with the Code of Audit Practice, having regard to the guidance on the specified criteria, published by the Audit Commission in October 2011, as to whether the Authority has proper arrangements for:

- securing financial resilience; and
- challenging how it secures economy, efficiency and effectiveness.

The Audit Commission has determined these two criteria as those necessary for me to consider under the Code of Audit Practice in satisfying myself whether the Authority put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources for the year ended 31 March 2012.

I planned my work in accordance with the Code of Audit Practice. Based on my risk assessment, I undertook such work as I considered necessary to form a view on whether, in all significant respects, the Authority had put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources.

### **Basis for adverse conclusion**

In considering the Authority's arrangements for securing financial resilience, I identified that:

- there were weaknesses in leadership and financial governance that have diverted action from delivering improvement. This is acknowledged in the Authority's draft Improvement Plan and Annual Governance Statement;
- the Corporate Plan has been subject to constant change impacting adversely on the Authority's ability to plan and prioritise over the medium to longer term;
- the Corporate Plan is not underpinned by a robust medium term financial plan that clearly sets out plans to address the projected shortfall of around £100 million for 2012 – 2015;
- there has been regular use of reserves to fund recurrent expenditure as well as weaknesses in forecasting capital expenditure; and
- the Authority did not secure robust financial control and continues to face a number of financial challenges most notably a recurrent overspend in Adult Social Services and a projected overspend of £17 million at month three of 2012/13.

Without robust systems and processes, financial risks and opportunities may not be managed effectively and a secure financial position may not be secured for the foreseeable future.

In considering the Authority's arrangements for challenging how it secures economy, efficiency and effectiveness, I identified that:

- there is a lack of clarity about the Authority's strategic priorities due to the changes in leadership and the Corporate Plan resulting in a lack of a strategic approach to challenging spend and considering how spending matches the priorities of the Authority;
- performance management arrangements were reviewed during the year but remain inadequate. The responsibility for the strategic change programme has continued to move between departments, was not linked to the wider savings programme and did not deliver as planned;
- there is inadequate information for decision-making and partnership arrangements need strengthening; and
- there was limited information to demonstrate that there was an increase in productivity and better output from more limited resources, most notably in respect of the Highways and Engineering Services contract. A third of corporate indicators and corporate projects did not meet targets or were not delivered as planned.

Without clear prioritising of resources within tighter budgets, cost reductions and improved efficiency and productivity may not be achieved.

### **Adverse conclusion**

On the basis of my work, having regard to the guidance on the specified criteria published by the Audit Commission in October 2011, the matters reported in the basis for adverse conclusion paragraph above prevent me from being satisfied that in all significant respects Wirral Borough Council put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ending 31 March 2012.

## Report by exception

The Audit Commission's guidance also requires me to report by exception on any other significant additional matters that come to my attention and which I consider to be relevant to proper arrangements to secure economy, efficiency and effectiveness in the use of resources. Such matters have come to my attention relating to significant weaknesses in the Authority's arrangements for:

- promoting and demonstrating the principles and values of good governance; and
- managing risks and maintaining a sound system of internal control.

The Authority has yet to address the corporate governance weaknesses which have been repeatedly identified in respect of key issues such as whistleblowing, conflicts of interest, compliance with procedures, risk management, Internal Audit and providing value for money. In addition gifts and hospitality records were not complete and there was a high incidence of non-compliance with procedures. Without good governance, risk increases and priorities may not be achieved.

I identified weaknesses in corporate arrangements for risk management, compliance with policies, procedures and internal control. There were not adequate and effective arrangements for assurance of the systems of internal control and I identified significant internal control weaknesses in respect of the control and management of, for example, assets and accounts payable. Without sound arrangements risks cannot be managed to a reasonable level and resources may not be used effectively to deliver value for money.

## Delay in certification of completion of the audit

I cannot formally conclude the audit and issue an audit certificate until I have completed the work necessary to issue my assurance statement in respect of the authority's Whole of Government Accounts consolidation pack and concluded on your responses to a number of governance issues. I am satisfied that this work does not have a material effect on the financial statements or on my value for money conclusion.

[Signature]

Michael Thomas

District Auditor



Audit Commission  
2nd Floor, Aspinall House, Aspinall Close, Middlebrook, Bolton BL6 6QQ

[Date] September 2012

# Appendix 2 – Uncorrected errors

I identified the following error during the audit which management have not addressed in the revised financial statements.

| Item of account   | Nature of error  | Statement of comprehensive income and expenditure |           | Balance sheet |           |
|---|--|---|-----------|---------------|-----------|
|   |  | Dr £'000s   | Cr £'000s | Dr £'000s     | Cr £'000s |
| 2010/11 restated comparators for cost of services and deficit on revaluation of PPE | <p>The 2010/11 statements included a £6m overstatement of income in service lines and expenditure in the revaluation line of the CIES. These items net each other off. The error is due to accounting for release of grants received in previous years and the Council were unable to accurately correct the error across the service lines. The uncorrected error in comparators has been disclosed in note 49 to the accounts.</p> | £6,000  | £6,000    |               |           |

# Appendix 3 – Corrected errors

I identified the following errors during the audit which management have addressed in the revised financial statements.

| Item of account  | Nature of error   | Statement of comprehensive income and expenditure |                             | Balance sheet   |                                       |
|--|---|---|-----------------------------|---|---------------------------------------|
|  |   | Dr £'000s   | Cr £'000s                   | Dr £'000s   | Cr £'000s                             |
| Provision for land charges   | My testing found that the provision of £569k was overstated and that the provision should be £250k with the remainder a contingent liability  |   | £319 (Net cost of services) | £319 (provisions)                                     | £319 (Usable reserves - General Fund) |
| Recognition of deferred capital receipts for assets where the Council is the lessor of a finance lease | The long term debtor has been correctly recognised. The error is in disclosure within the reserves only as the Council has failed to recognise a deferred capital receipts reserve and instead recorded the figure in the Capital Adjustment Account. |   |                             | £2,678 Capital Adjustment Account (unusable reserves) | £2,678 Deferred Capital Receipts      |

# Appendix 4 – Draft letter of management representation

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## Wirral Council - Audit for the year ended 31 March 2012

I confirm to the best of my knowledge and belief, having made appropriate enquiries of other directors of Wirral Council the following representations given to you in connection with your audit of the Authority's financial statements for the year ended 31 March 2012.

### Compliance with the statutory authorities

I have fulfilled my responsibility under the relevant statutory authorities for preparing the financial statements in accordance with the Accounts and Audit (England) Regulations 2011 and the Code of Practice on Local Authority Accounting in the United Kingdom which give a true and fair view of the financial position and financial performance of the Authority, for the completeness of the information provided to you, and for making accurate representations to you.

### Uncorrected misstatements

The effects of uncorrected financial statements misstatements summarised in the attached schedule are not material to the financial statements, either individually or in aggregate. *[schedule required for the uncorrected error from 2010/11]*

These misstatements have been discussed with those charged with governance within the Council and the reasons for not correcting these items are as follows.

- reason 1 etc;
- reason 2]

*[This section must include prior year uncorrected misstatements so needs to be tailored to reflect £6m last year and impact on the accounts this year.]*

### Supporting records

I have made available all relevant information and access to persons within the Authority for the purpose of your audit. I have properly reflected and recorded in the financial statements all the transactions undertaken by the Authority.

## **Internal control**

I have communicated to you all deficiencies in internal control of which I am aware.

## **Irregularities**

I acknowledge my responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud or error.

I also confirm that I have disclosed:

- my knowledge of fraud, or suspected fraud, involving either management, employees who have significant roles in internal control or others where fraud could have a material effect on the financial statements;
- my knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, analysts, regulators or others; and
- the results of our assessment of the risk the financial statements may be materially misstated as a result of fraud.

## **Law, regulations, contractual arrangements and codes of practice**

I have disclosed to you all known instances of non-compliance, or suspected non-compliance with laws, regulations and codes of practice, whose effects should be considered when preparing financial statements.

Other than the breach of regulations identified in respect of the Pension Fund, transactions and events have been carried out in accordance with law, regulation or other authority. The Authority has complied with all aspects of contractual arrangements that could have a material effect on the financial statements in the event of non-compliance.

All known actual or possible litigation and claims, whose effects should be considered when preparing the financial statements, have been disclosed to the auditor and accounted for and disclosed in accordance with the applicable financial reporting framework.

### Accounting estimates including fair values

I confirm the reasonableness of the significant assumptions used in making the accounting estimates, including those measured at fair value.

For the [accounting estimate of historical infrastructure assets value](#), I confirm:

- the appropriateness of the measurement method, including related assumptions and models, and the consistency in application of the method;
- the assumptions appropriately reflect management's intent and ability to carry out specific courses of action on behalf of the Authority, where relevant to the accounting estimates and disclosures;
- the disclosures relating to the accounting estimate are complete and appropriate under the Code; and
- that no subsequent event requires the Authority to adjust the accounting estimate and related disclosures included in the financial statements. [\[Wirral to tailor as appropriate\]](#)

**[Other representations may include:**

### Financial Guarantees

I confirm that the Council has not given any Financial Guarantees in the financial year 2011/12.

Specific representations e.g. The legal claim by ABC Limited has been settled out of court by a payment of £X. No further amounts are expected to be paid and no similar claims have been received or are expected to be received.

Whether the selection, and application, of accounting policies are appropriate.

Whether the following matters have been recognised, measured, presented or disclosed in accordance with the financial reporting framework:

- Plans or intentions that may affect the carrying value or classification of assets and liabilities;
- Liabilities, both actual and contingent; and
- Title to, or control over, assets, the liens or encumbrances on assets, and assets pledged as collateral.]

[\[We will agree whether it is necessary to request one or more of these representations about the financial statements\].](#)

### Related party transactions

I confirm that I have disclosed the identity of the Authority's related parties and all the related party relationships and transactions of which I am aware. I have appropriately accounted for and disclosed such relationships and transactions in accordance with the requirements of the Code.

### Subsequent events

### Audit Commission

I have adjusted for or disclosed in the financial statements all relevant events subsequent to the date of the financial statements.

Signed on behalf of Wirral Council

I confirm that this letter has been discussed and agreed by the Audit and Risk Management Committee on 19 September 2012.

Signed

Name

Position

Date

# Appendix 5 – Glossary

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## **Annual Audit Letter**

Letter issued by the auditor to the Authority after the completion of the audit that summarises the audit work carried out in the period and significant issues arising from auditors' work.

## **Annual Governance Report (AGR)**

The auditor's report on matters arising from the audit of the financial statements presented to those charged with governance before the auditor issues their opinion [and conclusion].

## **Annual Governance Statement (AGS)**

The annual report on the Authority's systems of internal control that supports the achievement of the Authority's policies aims and objectives.

## **Audit of the accounts**

The audit of the accounts of an audited body comprises all work carried out by an auditor under the Code to meet their statutory responsibilities under the Audit Commission Act 1998.

## **Audited body**

A body to which the Audit Commission is responsible for appointing the external auditor.

## **Auditing Practices Board (APB)**

The body responsible in the UK for issuing auditing standards, ethical standards and associated guidance to auditors. Its objectives are to establish high standards of auditing that meet the developing needs of users of financial information and to ensure public confidence in the auditing process.

## **Auditing standards**

Pronouncements of the APB that contain basic principles and essential procedures with which auditors must comply, except where otherwise stated in the auditing standard concerned.

---

## **Audit Commission**

Annual governance report



**Auditor(s)**

Auditors appointed by the Audit Commission.

**Comprehensive income and expenditure statement (CIES)**

One of main statements that shows income and expenditure for the year of account.

**Chartered Institute of Public Finance and Accountancy (CIPFA)**

Produces standards and guidance for the preparation of the financial statements.

**Code (the)**

The Code of Audit Practice for local government bodies issued by the Audit Commission and approved by Parliament.

**Commission (the)**

The Audit Commission for Local Authorities and the National Health Service in England.

**Ethical Standards**

Pronouncements of the APB that contain basic principles relating to independence, integrity and objectivity that apply to the conduct of audits and with which auditors must comply, except where otherwise stated in the standard concerned.

**Financial Reporting Standards (FRS)**

Accounting standards for the preparation of financial statements (see also IAS and IFRS below)

**Financial statements**

The annual statement of accounts that the Authority is required to prepare, which report the financial performance and financial position of the Authority in accordance with the Accounts and Audit (England) Regulations 2011 and the Code of Practice on Local Authority Accounting in the United Kingdom.

## **Group accounts**

Consolidated financial statements of an Authority and its subsidiaries, associates and jointly controlled entities.

## **Highways and Engineering (HES)**

Refers to the Highways and Engineering contract in Technical Services

## **International Accounting Standards (IAS)**

Accounting standards for the preparation of financial statements

## **International Financial Reporting Standards (IFRS)**

Accounting standards for the preparation of financial statements

## **Internal control**

The whole system of controls, financial and otherwise, that the Authority establishes to provide reasonable assurance of effective and efficient operations, internal financial control and compliance with laws and regulations.

## **Local Authority (Scotland) Accounts Advisory Committee (LASAAC)**

Works in partnership with CIPFA England. The partnership board is responsible for preparing, maintaining, developing and issuing the Code of Practice on Local Authority Accounting for the United Kingdom.

## **Local Government Association (LGA)**

The membership organisation for local government bodies in England.

## **Materiality**

The APB defines this concept as ‘an expression of the relative significance or importance of a particular matter in the context of the financial statements as a whole. A matter is material if its omission would reasonably influence the decisions of an addressee of the auditor’s report; likewise a misstatement is material if it would have a similar influence. Materiality may also be considered in the context of any individual primary statement within the financial statements or of individual items included in them. Materiality is not capable of general mathematical definition, as it has both qualitative and quantitative aspects’.

The term 'materiality' applies only to the financial statements. Auditors appointed by the Commission have responsibilities and duties under statute, as well as their responsibility to give an opinion on the financial statements, which do not necessarily affect their opinion on the financial statements.

**Merseyside Pension Fund (MPF)**

The pension fund administered by Wirral Council.

**Office for Standards in Education, Children's Services and Skills (OFSTED)**

Regulates standards of teaching in schools and colleges.

**Property, plant and equipment (PPE)**

A category of long term assets on the balance sheet.

**Society of Local Authority Chief Executives (SOLACE)**

The membership organisation for local authority chief executives

**Significance**

The concept of 'significance' applies to these wider responsibilities and auditors adopt a level of significance that may differ from the materiality level applied to their audit of the financial statements. Significance has both qualitative and quantitative aspects.

**Those charged with governance**

Those entrusted with the supervision, control and direction of the Authority. This term includes the members of the Authority and its Audit and Risk Management Committee.

**Value for money (VFM)**

Economy, efficiency and effectiveness in the use of resources

**Whole of Government Accounts (WGA)**

A project leading to a set of consolidated accounts for the entire UK public sector on commercial accounting principles. The Authority must submit a consolidation pack to the department for Communities and Local Government which is based on, but separate from, its financial statements.



# Appendix 6 – Action plan

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## Recommendations

### Recommendation 1

Improve controls for property plant and equipment and ensure infrastructure asset records are sufficient for the 2012/13 reporting requirements.

**Responsibility**

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**Priority**

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**Date**

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**Comments**

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### Recommendation 2

Ensure weaknesses in the application and adherence to the procedures for the authorisation controls in the accounts payable system are addressed.

**Responsibility**

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**Priority**

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**Date**

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**Comments**

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### Recommendation 3

Strengthen segregation of duties and authorisation processes for journals.

**Responsibility**

---

**Priority**

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|   |  |
|---|--|
| <b>Date</b>   |  |
| <b>Comments</b>   |  |
| <b>Recommendation 4</b>   |  |
| Ensure all officers and members complete declarations in respect of related party transactions.   |  |
| <b>Responsibility</b>   |  |
| <b>Priority</b>   |  |
| <b>Date</b>   |  |
| <b>Comments</b>   |  |
| <b>Recommendation 5</b>   |  |
| Revise the Annual Governance Statement (AGS) to ensure it: <ul style="list-style-type: none"> <li>■ reflects compliance with 'Delivering Good Governance in Local Government: a Framework' published by CIPFA/SOLACE in June 2007;</li> <li>■ is consistent with other information on governance that is available to the Council.</li> </ul> |  |
| <b>Responsibility</b>   |  |
| <b>Priority</b>   |  |
| <b>Date</b>   |  |
| <b>Comments</b>   |  |
| <b>Recommendation 6</b>   |  |
| Ensure the weaknesses identified in the Highways and Engineering Services report in the public interest are addressed and the Council's response as required by the Audit Commission Act 1998 is completed as a matter of urgency.  |  |
| <b>Responsibility</b>   |  |
| <b>Priority</b>   |  |
| <b>Date</b>   |  |

|   |
|---|
| <b>Comments</b>   |
| <b>Recommendation 7</b>   |
| Ensure the weakness identified in respect of financial resilience, securing economy efficiency and effectiveness and proper arrangements are addressed. |
| <b>Responsibility</b>   |
| <b>Priority</b>   |
| <b>Date</b>   |
| <b>Comments</b>   |

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



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September 2012



## WIRRAL COUNCIL

### AUDIT & RISK MANAGEMENT COMMITTEE

19 SEPTEMBER 2012

|                                     |                                     |
|-------------------------------------|-------------------------------------|
| <b>SUBJECT</b>                      | <b>INSURANCE FUND ANNUAL REPORT</b> |
| <b>WARD/S AFFECTED</b>              | <b>ALL</b>                          |
| <b>REPORT OF</b>                    | <b>INTERIM DIRECTOR OF FINANCE</b>  |
| <b>RESPONSIBLE PORTFOLIO HOLDER</b> | <b>COUNCILLOR PHIL DAVIES</b>       |
| <b>KEY DECISION</b>                 | <b>NO</b>                           |

#### 1.0 EXECUTIVE SUMMARY

1.1 This report provides a review of the Risk and Insurance activity during 2011/12 and the plans for 2012/13 and beyond. It details the underwriting arrangements and recent loss histories for the principal areas of insured risk and describes the impact of measures taken to improve their management. The provisions and reserves within the Insurance Fund at the end of 2011/12 are confirmed which included the release of resources to the General Fund. This report was presented to Cabinet on 21 June 2012.

#### 2.0 BACKGROUND AND KEY ISSUES

##### Approach to Risk Financing

- 2.1 Since 1988 the Authority has used a combination of self-insurance and external insurance to address the financial consequences of risk.
- 2.2 Those risks which have the potential to generate very costly losses are self insured to a high level but with a cap on the Council's liability above which costs are met by insurers. Such risks include legal liability to members of the public and to other organisations for injury or damage to property, damage to Council buildings and motor accidents involving Council vehicles.
- 2.3 Other more minor risks such as damage to equipment and plate glass are wholly self insured.
- 2.4 The self-funding of losses is part of the overall Risk Management Strategy. This provides a greater incentive to deal with risk more effectively as any reduction in claims directly benefits the Authority. It also minimises the liability for Insurance Premium Tax and contributions to insurers' administrative costs and profit margins. The level of self insurance is influenced by the need to maintain the stability of the Insurance Fund over the long term and by the appetite for risk.
- 2.5 Claims are met from the Insurance Fund with the Fund being maintained through annual contributions from all departments.

- 2.6 The Fund also holds reserves which are available to support the implementation of initiatives to improve the management of risks both insured and uninsured.

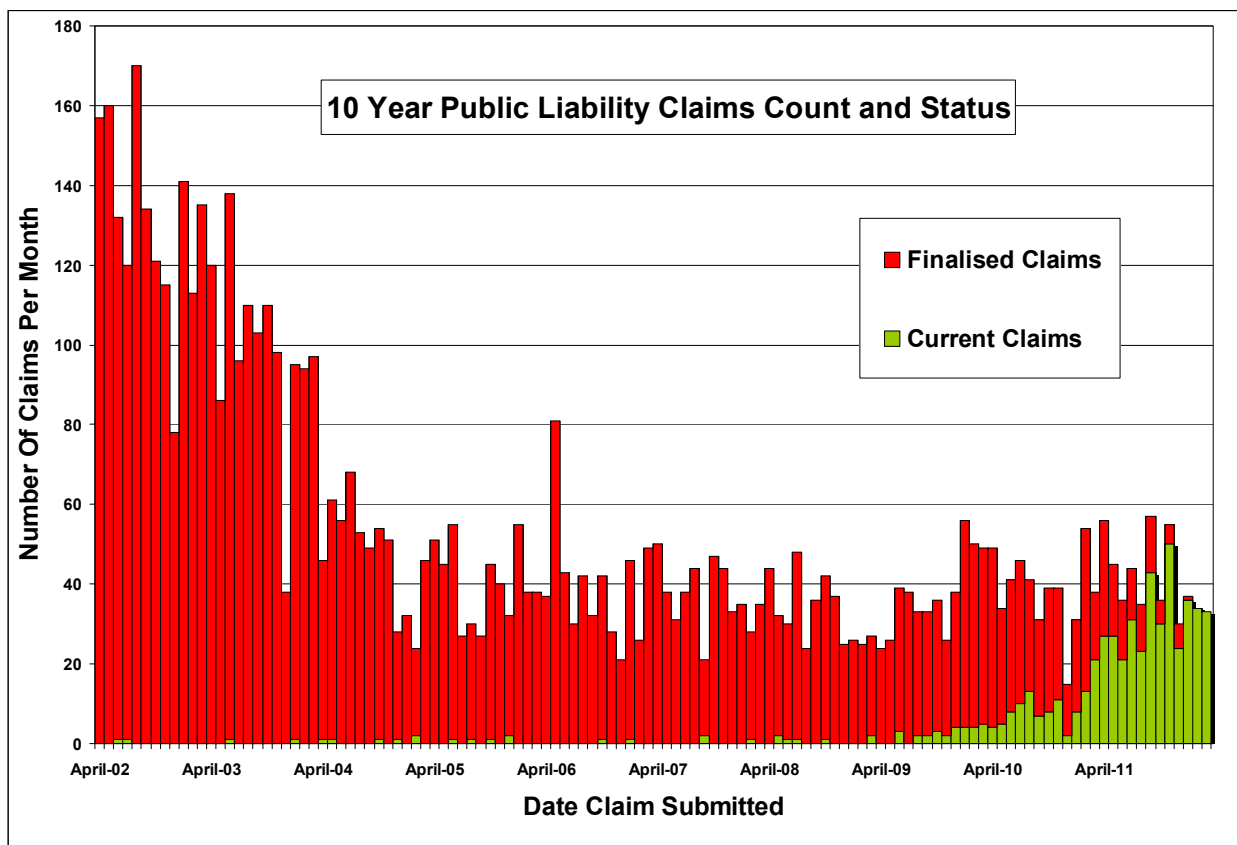
### **Principal Areas of Insured Risk - Liability**

- 2.7 The Council currently self-insures to a maximum aggregate of £2.5 million all claims relating to any one policy year. The level of aggregate varies from contract to contract according to market conditions and loss history. It has been as high as £7.25 million in 2005/06. In addition the Council's maximum liability for any single claim is limited to £250,000. Any costs above this are met by the insurer Zurich Municipal. The policy is subject to a Long Term Agreement until 31 March 2015 under which the policy is renewed each year provided that the premium rate and terms are unchanged.
- 2.8 Whilst claims are administered by Zurich Municipal the company has no authority to settle claims within the deductible limits. All decisions on tactics, settlement and quantum on claims up to £250,000 are controlled by the Council. This ensures that decisions are made in the best interests of the authority and a stable claims strategy can be maintained. The insurers have no financial interest in claims below the deductible and therefore may have little motivation to secure the most efficient outcomes. On matters that exceed £250,000 the Council works in partnership with the insurers to agree mutually acceptable outcomes. Zurich Municipal and the solicitors engaged to defend legal proceedings work to defined service level agreements and their performance is continuously monitored and managed.
- 2.9 After the high levels of claims experienced around ten years ago the number of public liability claims has settled in recent years to a relatively predictable level as has the payment pattern. 2011/12 saw 500 new Public Liability (PL) claims.

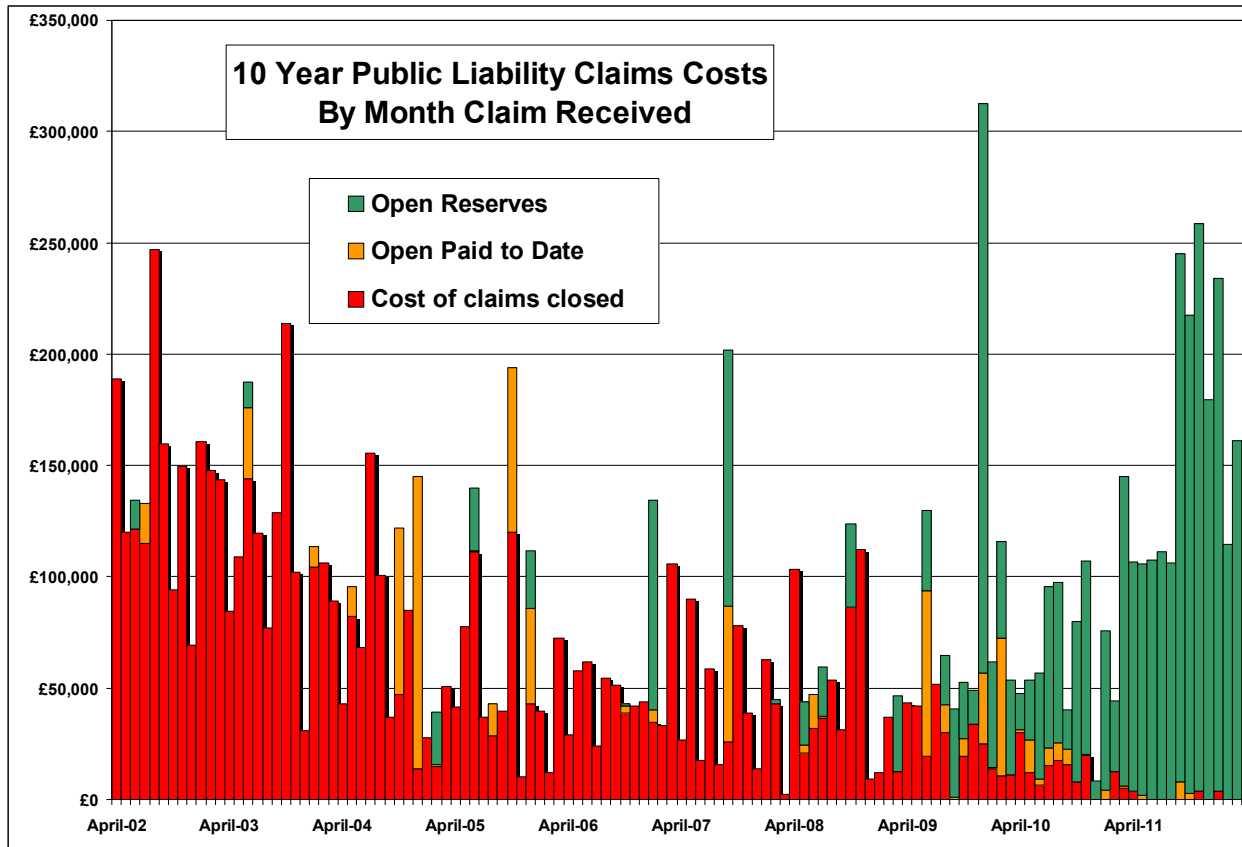
| <b>PUBLIC LIABILITY CLAIMS</b> |                    | <b>Claims<br/>2011/12<br/>Number</b> | <b>Paid &amp;<br/>Reserved<br/>£</b> |
|--------------------------------|--------------------|--------------------------------------|--------------------------------------|
| <b>Department</b>              | <b>Function</b>    |                                      |                                      |
| Technical Services             | Carriageway Claims | 146                                  | 417,449                              |
| Technical Services             | Footway Claims     | 240                                  | 1,041,650                            |
| Technical Services             | Leisure            | 48                                   | 223,273                              |
| Technical Services             | Other              | 30                                   | 100,023                              |
| Children & Yg People           | All                | 31                                   | 255,037                              |
| Finance                        | All                | 1                                    | 3,500                                |
| Adult Social Services          | All                | 1                                    | 15,000                               |
| Law, HR & Asset Mgt            | All                | 3                                    | 22,156                               |

2.10 The charts which follow are based on the date that the claim was received rather than the date of incident to indicate the work generated during the year. If Members require claims data in any other format it can be provided.

2.11 There are currently 594 open public liability files. Whilst the majority relate to slips and trips a proportion are significantly more complex involving abuse, defamation, bullying and harassment, failure to educate, disease, subsidence, nuisance and social services matters. The chart shows the number of claims received (by month) and the current status of those claims which shows that the more complex claims can take many years to settle.



2.12 The following chart indicates the expected final costs of claims received during the same 10 year period. The monthly totals are split between amounts paid on closed claims, paid to date on open claims and reserves for claims not yet paid. The higher reserved costs for recently submitted claims are accounted for by the Council's high repudiation rate. A reserve has to be provided for each claim on a full liability basis until investigations indicate that a defence is available. Provided that the excellent repudiation rate can be maintained, by departments providing us with a sound defence, it is expected that the ultimate cost of these latest claims will revert to the standard PL settlement pattern of less than £1 million per year.



2.13 During 2011/12 there were 63 new Employers Liability (EL) claims:-

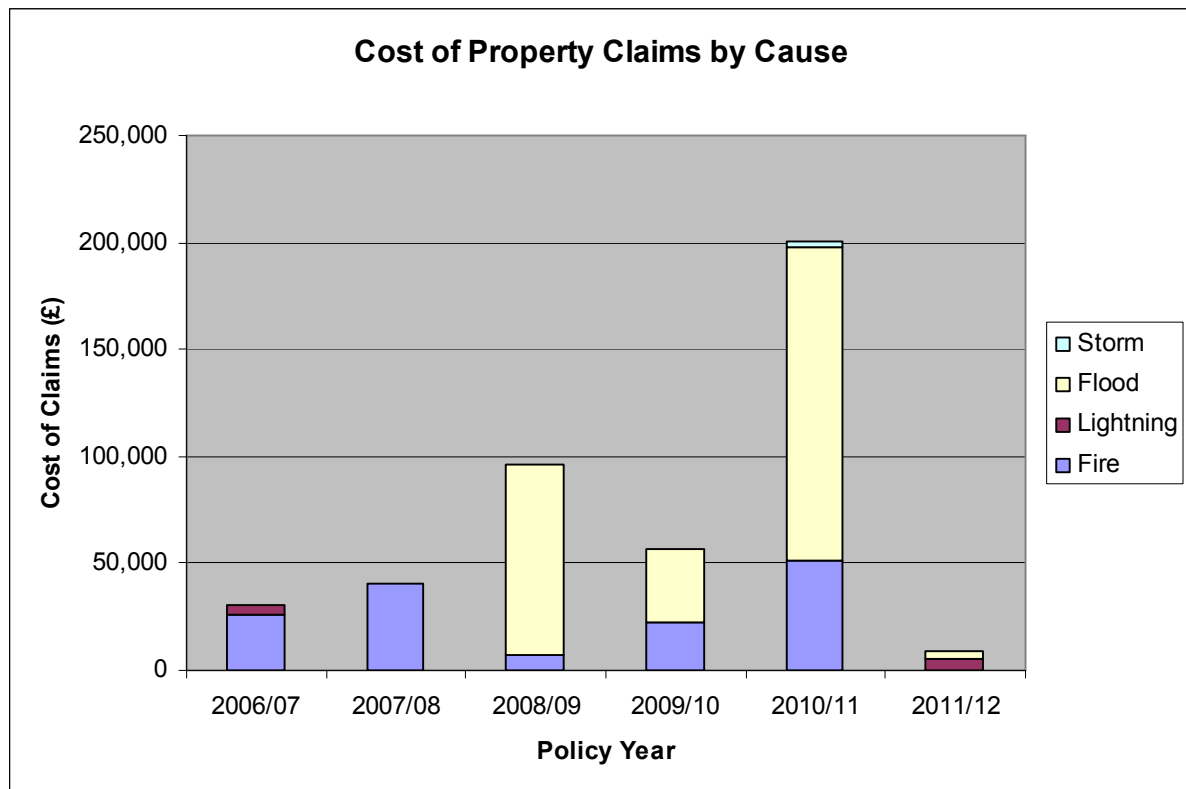
| <b>EMPLOYEE LIABILITY CLAIMS</b> |                 | <b>Claims 2011/12</b> | <b>Paid &amp; Reserved</b> |
|----------------------------------|-----------------|-----------------------|----------------------------|
| <b>Department</b>                | <b>Function</b> | <b>Number</b>         | <b>£</b>                   |
| Technical Services               | Various         | 12                    | 77,753                     |
| Technical Services               | Leisure         | 23                    | 348,043                    |
| Regeneration                     | All             | 2                     | 23,939                     |
| Children & Yg People             | All             | 16                    | 156,943                    |
| Finance                          | All             | 1                     | 7,500                      |
| Adult Social Services            | All             | 5                     | 63,000                     |
| Law, HR & Asset Mgt              | All             | 4                     | 40,850                     |

2.14 Despite a reduction in the workforce the volume of Employers Liability claims continues to grow. Much of the growth continues to result from vibration related claims from Parks and Open Spaces employees and it is expected that the ultimate cost will be in the region of £750,000.

2.15 There are currently 112 open claims with claims frequently submitted with an exposure period as far back as the 1950's and 1960's for matters such as Noise Induced Hearing Loss and cancers relating to asbestos exposure. Wirral are also the designated claims handlers for employment claims attributable to the former Merseyside County Council. The time span and documentary evidence available make these cases complex to resolve.

2.16 Although the number of PL / EL claims overall remains relatively static the complexity of individual cases continues to increase. A lack of witnesses and documentation for historic cases is not unexpected but for more recent cases any shortfall in employee information is of concern and can affect insurers views of the Authority. If claims are to be managed within the existing capacity these complex claims can severely impact upon the available resources.

### Property and Business Continuity

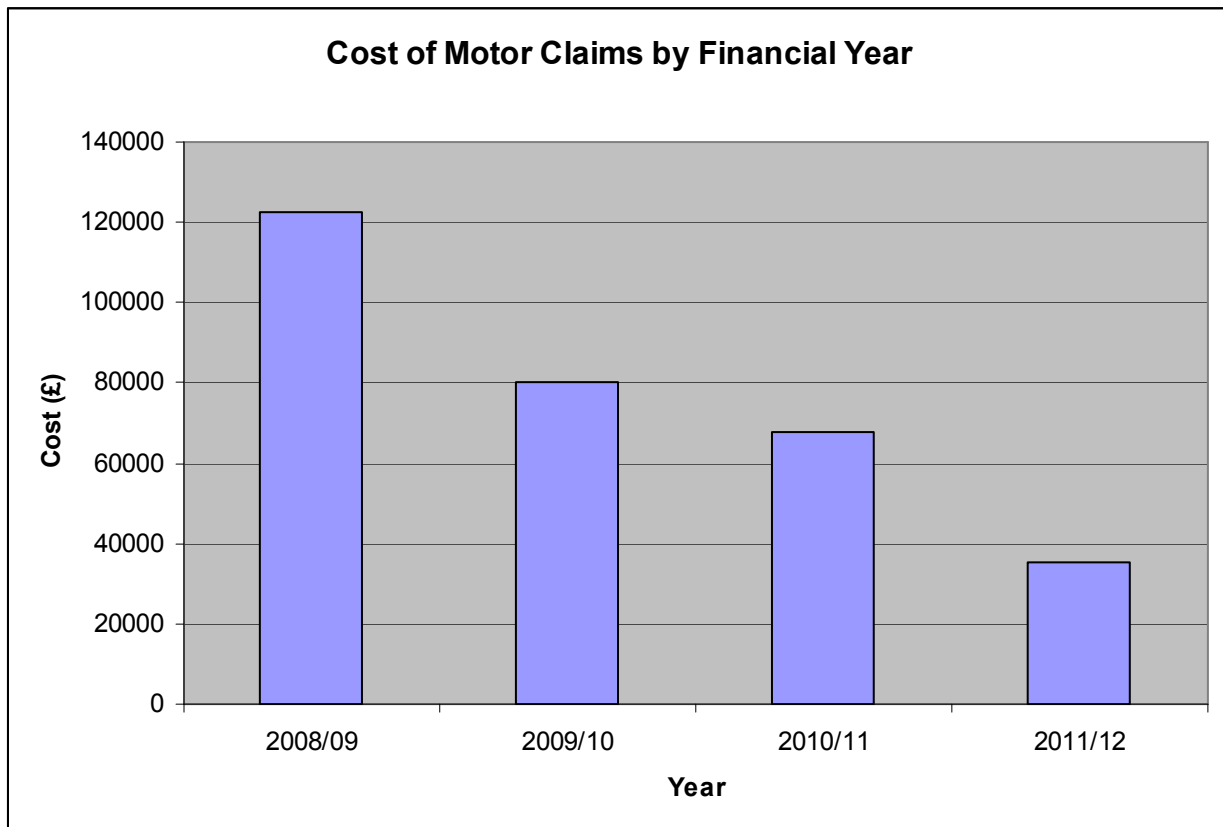


2.17 The Council self-insures to a maximum of £500,000 damage to property through fire and £1 million for damage to property through storm and flood. It also has a maximum liability of £500,000 for business continuity losses through fire and £1 million through storm and flood. Any costs above this are met by the insurer Zurich Municipal. The Long Term Agreement on these policies expires on 29 June 2013 and will be subject to competitive tender in 2013. External premiums have fallen in recent years in line with reductions in the sums insured arising from Academy conversions.

2.18 Whilst all losses are reported to insurers minor claims are investigated and administered directly by the Council. A loss adjuster would be appointed to investigate and report to insurers on larger losses but the internal team would still have a significant role in ensuring the optimum settlement for the authority.

2.19 When the contract was last tendered in 2008 the Property insurance was extended to cover storm flood and escape of water. The widening of cover has led to a significant increase in the number and cost of claims. Losses were high in 2010/11 when the severe winter led to a number of major floods from burst pipes but costs remain within the level of annual contributions to the Fund.

### Motor



2.20 The Council self-insures to a maximum £200,000 all claims relating to any one policy year. In addition its maximum liability for any single claim is limited to £75,000. Any costs above this are met by the insurer Zurich Municipal. The policy is subject to a Long Term Agreement until 31 March 2014. External premiums have fallen sharply in recent years in line as the Council's fleet has reduced with the outsourcing of services.

2.21 The authority handles all claims for 'own damage' and insurers administer third party claims but must refer to the Council any proposals to pay or reject claims. As with liability claims the authority has input into all decisions on tactics and quantum and continuously monitors and manages the performance of the claims handlers.

- 2.22 The reduction in vehicle numbers has been partly responsible for a significant decrease in the volume and cost of claims in recent years whilst better management of fleet risk has been another factor. The authorisation to drive procedure, minibus assessment process and a more robust approach to the investigation of accidents and the management of claims are all elements of this approach.
- 2.23 Although claims numbers are low an increase has been noted in claims for alleged 'whiplash' injuries and cases where third parties later dispute claims for which they were clearly responsible.

### **Other Classes of Business**

- 2.24 Risks which present a more limited exposure to loss (such as damage to equipment and plate glass) are wholly self insured. Responsibility for handling claims for these areas rests solely with the Council. Others (such as Money Computer Fidelity Guarantee and Personal Accident) are partially underwritten by insurers, procured through competitive tender and subject to Long Term Agreements. The Council liaises with insurers over the small number of claims generated by these contracts.

### **Review of Liability Reserves and Provisions**

- 2.25 Whilst it is important to ensure that the Insurance Fund holds sufficient resources to meet its liabilities there is also an opportunity cost to maintaining a greater balance than is needed.
- 2.26 To help ensure that the Fund is sufficient meet the cost of liability claims but is not over resourced a review is usually undertaken every two years by an external actuary who assesses the amount needed to fund anticipated liabilities for previous years. In the intervening years a self-evaluation is undertaken for the same purpose.
- 2.27 Ordinarily an external review would have been commissioned to examine the liabilities incurred as at 31 March 2012. As reported to Audit & Risk Management Committee on 13 March 2012 the current stability of the account did not warrant the £7,000 cost of an external review. Furthermore the uncertainty for future funding requirements posed by ongoing changes to the civil justice regime would also limit the benefit of an external study Therefore a further self-evaluation was undertaken this year.
- 2.28 The funding required was calculated by taking the sum recommended by the actuary for losses as at 31 March 2010 and adjusting this for the premiums received and losses met by the Fund in both 2010/11 and 2011/12. This self-evaluation indicated that a sum of £8,286,243 was required as at 31 March 2012 to meet outstanding liabilities:-

| <b>Combined Liability</b>                          | <b>Actual Provision<br/>31/03/12<br/>£</b> | <b>Revised Provision<br/>31/03/12<br/>£</b> |
|--|--|---|
| Provisions < 1 year                                | 1,200,000                                  | 1,200,000                                   |
| Provisions > 1 year                                | 4,899,995                                  | 4,899,995                                   |
| Reserves<br>(claims incurred but not yet received) | 2,186,248                                  | 2,186,248                                   |
| <b>Total</b>                                       | <b>8,286,243</b>                           | <b>8,286,243</b>                            |

### Review of Other Reserves and Provisions

2.29 As indicated earlier the Insurance Fund underwrites a number of other classes of business. It also holds sums in respect of uninsured liability risks and to pay for risk improvement measures and these are reviewed each financial year. The amounts held at the end of March 2012 compared to the amounts based upon the self-evaluation identified that £166,352 could be returned to Council balances.

| <b>Class</b>   | <b>Actual Provision<br/>31/03/12<br/>£</b> | <b>Revised Provision<br/>31/03/12<br/>£</b> | <b>Difference to general<br/>balances<br/>£</b> |
|--|--|---|---|
| <b>Property</b>  | 2,625,608                                  | 2,500,000                                   | 125,608   |
| <b>Motor</b>   | 292,409                                    | 250,000                                     | 42,409  |
| <b>Wholly self-insured claims</b><br>(such as plate glass and equipment)                                       | 277,830                                    | 277,830                                     | 0   |
| <b>Civil Contingency</b><br>(funds improvements in resilience)   | 1,500,000                                  | 1,500,000                                   | 0   |
| <b>Non Highway Risk Improvement</b><br>(improvements to footpaths and surfaces in parks, leisure centres etc.) | 198,000                                    | 198,000                                     | 0   |
| <b>Risk Management</b><br>(supports individual risk initiatives)   | 148,335                                    | 150,000                                     | -1,665  |
| <b>Uninsured liabilities</b><br>(funds historic claims where insurer cannot be traced or is insolvent)         | 2,127,950                                  | 2,127,950                                   | 0   |
| <b>Claims Management</b><br>(cost of handling uninsured liability claims)                                      | 289,564                                    | 289,564                                     | 0   |
| <b>Budget Surplus / Deficit</b><br>(balance of fund income v expenditure)                                      | 155,920                                    | * 155,920                                   | 0   |
| <b>Total</b>   | <b>7,615,616</b>                           | <b>7,449,264</b>                            | <b>166,352</b>                                  |



\* £136,030 of this reserve is to be used to limit the inflationary increase in insurance charges to the General Fund in 2012/13 (as per Cabinet resolution 24 November 2011).

- 2.30 A recent decision of the Supreme Court in relation to the Employers Liability trigger litigation has made it more likely that a 'claw back' clause in the Scheme of Arrangement for Municipal Mutual Insurance (MMI) will be initiated. The current potential cost to Wirral of the claw back (£500,000) is fully funded within the reserve for Uninsured Liabilities. However in the longer term if the claw back does not enable MMI to achieve a solvent run off the Council may also have to fund a part of the cost of future claims. Such a situation is by no means certain and the likely cost cannot be quantified with any accuracy at this time.
- 2.31 I am proposing to restore the balance of the Risk Management provision to £150,000. The surpluses in the Property and Motor provisions are due to low levels of losses and effective claims management and I propose releasing these to the General Balance.

### **Insurance and Risk Management 2011/12**

- 2.32 Throughout 2011/12 regular progress reports on Risk and Insurance Management were presented to the Audit & Risk Management Committee.

#### Claims Issues

- 2.33 The Risk & Insurance Team has continued a national role in relation to the ongoing reforms to civil litigation funding and costs lead by Lord Justice Jackson. This is a complex issue with a Wirral officer investing considerable effort over the last 3 years representing the views of the public sector. This has seen Wirral having direct dealings with Ministers, MP's, senior Whitehall Civil Servants and leading trade bodies such as the Association of British Insurers (ABI) and the Federation of Insurance Lawyers (FOIL). The officer now also formally represents the interests of the Association of Local Authority Risk Managers (ALARM) in relation to liability and claims matters with expenses in relation to this work now met by ALARM. Whilst the outcomes of the many complex and interdependent policy threads are not finalised Wirral has the benefit of direct input into the consultations, advanced knowledge of potential implications together with a high profile within the insurance industry that will assist with our insurance and claims programmes.
- 2.34 Improvements reported in claims management in previous years were sustained through the continuing efforts of departments to manage their liability risk. The 'firm but fair' stance on liability and the counter-claims fraud strategy also contribute to this outcome. Although numbers have increased slightly the performance of claims handling and legal services providers and the continuing active involvement of officers in tactics and procedure all assist in containing the overall cost to the Council of this area of risk.

2.35 The management of Liability claims took an increasing amount of the capacity during the year. In addition to the issues noted earlier in respect of vibration claims and noise induced hearing loss cases, there are specific complex and time-consuming Public and Employee Liability claims.

#### Services for Schools

2.36 The Council cannot provide insurance for those schools which transfer to Academy Schools. To provide support an insurance facility for Academy Schools was established and has proven popular. Assistance is provided in obtaining competitive quotations for academy-specific insurance packages, critically appraising policy wordings verifying all policy documentation, providing support with claims and general risk management advice. The service generated income of approximately £25,000 in 2011/12.

2.37 The risk ranking survey programme for primary and special schools was completed in July 2011 with all schools being given tailored risk improvement advice. A report summarising the surveyor's findings was shared with the Department for Children & Young People to inform the allocation of future capital funding.

#### Budget

2.38 The Insurance Fund Budget 2012/13 was approved by Cabinet on 24 November 2011. Cabinet noted the savings to the Schools Budget of £226,000 and agreed to use a reserve within the Insurance Fund to limit to £20,000 the budgetary increase to the General Fund.

#### Joint Working

2.39 Arrangements were made for Liverpool City Council to join the Council's contract for Insurance Broking and Advice as this had been issued on a collaborative basis.

2.40 Advice has also been provided to Sefton Council in relation to improving their arrangements for procuring insurance and related services and for managing claims. The authority also joined Wirral's legal defence services contract which had also been issued on a collaborative basis.

#### Strategic Risk Management

2.41 The Executive Team was supported in reviewing the Corporate Risk Register with the revised Register approved by Cabinet on 2 February 2012. Progress in tackling these risks is covered in the Corporate Risk Monitoring Summary which is an appendix to the quarterly Corporate Performance and Financial Review.

- 2.42 Following discussion at the Executive Team Cabinet endorsed the need for a new Risk Management Framework and processes. A critical appraisal of the existing Risk Management Strategy was undertaken and a project plan covering the work required to introduce required improvements was produced. Draft proposals have been prepared for consideration by the Chief Executive and the Leadership.
- 2.43 A priority for improvement is the introduction of a corporate system to capture, analyse and report risk information. Such a system would support understanding of the risk profile and strategic and operational decision-making. The functionality of the Council project management system with respect to risk was compared against a baseline specification and Concerto Support Services Limited have proposed enhancements to the functionality of their system to address the gaps. The system is now being implemented.
- 2.44 Regular quality checks on reports presented to Cabinet were undertaken and feedback provided to Chief Officers to help ensure continuous improvement.
- 2.45 As part of the ongoing programme of training for Members the Risk & Insurance Officer delivered an introduction to risk management in September 2011.
- 2.46 Advice and support has been given to departmental management teams including the recently formed Department of Regeneration Housing & Planning in respect of robust structures and processes for identifying and managing risk.

### **Insurance and Risk Management 2012/13 and beyond**

- 2.47 A significant area of work concerns improvements to the Risk Management Framework and processes.

| <b>Task</b>  | <b>Target Date</b> |
|--|--------------------|
| Undertake the in-house review of funding for insured liabilities   | May 2012           |
| Discuss with leadership proposals for improvements to Risk Management Framework and processes                                | June 2012          |
| Roll out new risk management module of Concerto project management system  | August 2012        |
| Negotiate annual renewal of Marine Insurance contract  | September 2012     |
| Deliver risk management training session for Members   | September 2012     |
| Complete the Insurance Fund Budget 2013/14   | October 2012       |
| Begin exercise to remarket and procure the Property, Business Interruption, Money and Fidelity Guarantee insurance contracts | January 2013       |
| Review of key departmental risks for 2013/14.  | Feb/Mar 2013       |
| Confirm terms for the renewal of the Liabilities, Motor, Engineering, Computer and Foster Care policies                      | February 2013      |

2.48 In 2014 the existing Long Term Agreements (LTAs) for the Motor and Engineering contracts expire. This will require an EU compliant competitive tender exercise to determine the future provider. The following year LTAs for the Liability and Computer insurance contracts end and the Liability insurance tender is the most complex and time consuming procurement exercise of the tenders. Premium rates in the insurance market are cyclical and the existing contracts were placed at the peak of a 'soft' insurance market. There is some evidence that the market is now hardening and, with the claims issues above, mean that an increase in premiums is likely.

2.49 Regular reports on the progress of Insurance and Risk Management will continue to be presented to the Audit and Risk Management Committee. There will also be regular updates on significant risks as part of the quarterly Performance and Financial Review reports presented to Cabinet.

### **3.0 RELEVANT RISKS**

3.1 The release of money from the Insurance Fund could potentially leave it exposed in the event of a series of major losses. However, the Council's liability is limited by aggregate excesses and for some policies the Fund reflects the maximum liability for that risk in any one year. In respect of other risks the amount within the Fund is assessed by the Risk & Insurance Team understanding of claims patterns and costs. Expenditure on major losses would be incurred over several years allowing time to supplement funding should it be necessary.

3.2 Insurance charges (including those for schools) are calculated six months before the start of each financial year. Schools converting to Academy status cannot be covered by the Council's insurance arrangements. Uncertainty over which schools will convert and the date of conversion presents a risk that the Insurance Fund will not recover sufficient premiums to meet claims from schools. This is mitigated to some degree by ensuring that developments are known as early as possible.

3.3 If the clawback arrangement does not enable MMI to achieve a solvent run off it is possible that the Council may have to fund a proportion of future claims which it submits to the company although this is not considered likely at present. As liability claims take months if not years to settle this would afford the Council time to consider reviewing funding levels.

### **4.0 OTHER OPTIONS CONSIDERED**

4.1. The current surplus could be retained within the Insurance Fund but this has been identified as being greater than the level of resource required.

### **5.0 CONSULTATION**

5.1 Secondary Schools will be closely involved in any further development of the insurance facility for Academy Schools.

## **6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

6.1 There are no implications arising directly from this report.

## **7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

7.1 The continuing effective and pro-active approach to managing insured risk is reflected in the assessment of the amounts required in the Insurance Fund to meet current and future claims.

7.2 The Insurance Budget 2012/13 produced a saving to schools of £226,000. The increase to the General Fund has been limited to £20,000 through use of a reserve within the Insurance Fund. The Insurance Fund Budget 2013/14 is to be presented to Cabinet in November 2012.

7.3 The sum of £166,352 has been released from the Insurance Fund to the General Fund balance in 2011/12. No further release is anticipated in 2012/13.

7.4 Although under pressure the Risk & Insurance Team currently has sufficient resource to deal with its insurance responsibilities. However the additional work required as a result of the planned improvements to risk management arrangements may not be deliverable within existing staff resources.

## **8.0 LEGAL IMPLICATIONS**

8.1 There are no implications arising directly from this report.

## **9.0 EQUALITIES IMPLICATIONS**

9.1 There are no implications arising directly from this report.

9.2 Equality Impact Assessment (EIA) is not required for this report.

## **10.0 CARBON REDUCTION IMPLICATIONS**

10.1 There are no implications arising directly from this report.

## **11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 There are no implications arising directly from this report.

## **12.0 RECOMMENDATIONS**

12.1 That it be noted that:-

a) the sum of £166,352 was released from the Insurance Fund to the General Fund balances.

b) the Risk Management reserve was restored to a balance of £150,000.

## 13.0 REASONS FOR RECOMMENDATIONS

13.1 Cabinet agreed to the recommendations which were based officers assessment that the sum recommended for release was in excess of that required to fund losses and will not present a risk to the stability of the Insurance Fund.

FNCE/165/12

**REPORT AUTHOR:** Mike Lane  
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## SUBJECT HISTORY

| Council Meeting                                | Date             |
|--|------------------|
| Insurance Fund Annual Report 2011/12 – Cabinet | 21 June 2012     |
| Insurance Fund Budget 2012/13 - Cabinet        | 24 November 2011 |
| Insurance Fund Annual Report 2010/11 - Cabinet | 23 June 2011     |
| Insurance Fund Budget 2011/12 - Cabinet        | 2 September 2010 |
| Insurance Fund Actuarial Review - Cabinet      | 24 June 2010     |
| Insurance Fund Budget 2010/11 - Cabinet        | 26 November 2009 |

## WIRRAL COUNCIL

### AUDIT & RISK MANAGEMENT COMMITTEE

19 SEPTEMBER 2012

|                                     |  |
|-------------------------------------|--|
| <b>SUBJECT</b>                      | <b>CORPORATE RISK AND INSURANCE MANAGEMENT</b> |
| <b>WARD/S AFFECTED</b>              | <b>ALL</b>                                     |
| <b>REPORT OF</b>                    | <b>INTERIM DIRECTOR OF FINANCE</b>             |
| <b>RESPONSIBLE PORTFOLIO HOLDER</b> | <b>COUNCILLOR PHIL DAVIES</b>                  |
| <b>KEY DECISION</b>                 | <b>NO</b>                                      |

#### 1.0 EXECUTIVE SUMMARY

- 1.1 This report details progress made since the last report in relation to the objectives for corporate risk and insurance management and anticipated developments in the coming months.

#### 2.0 BACKGROUND AND KEY ISSUES

##### Insurance Management progress

- 2.1 Liability claims statistics for Q1 2012/13 were completed. The statistics indicate that with the exception of anomalous clusters of Employers Liability cases the account continues to perform within expectations. Current funding levels are considered to be adequate.
- 2.2 The repudiation rate for highways claims has been maintained at around 90% indicating that a sound system of highway inspection and repair is in operation. Discussions have been held with the Department of Technical Services over the level and application of budgets needed to ensure that these figures can be maintained.
- 2.3 The Council continues to receive claims of an unusual nature. Self represented claimants using the claims process to progress unmeritorious or vexatious claims continue to occupy a large proportion of time. These cases are costly to defend as irrespective of the merits the Council must investigate and formally respond to each allegation. The Council recently had one such claim struck out with £14,000 of costs awarded against the claimant and the means for recovering these costs are currently being considered.
- 2.4 The outcome of the in-house review of Insurance Fund reserves and provisions was incorporated into the Insurance Fund Annual Report presented to Cabinet on 21 June 2012. Cabinet endorsed the release of £166,000 to the General Fund balance. The methodology of the review has been investigated by the Audit Commission as part of the audit of the Statement of Accounts.

2.5 An outline project plan has been drawn up for the tendering of the Council's Property Insurance in 2013 and an initial planning meeting was held with the authority's insurance brokers JLT.

2.6 Renewal terms for those policies expiring on 29 June 2012 were received:-

| <b>Policy</b>                       | <b>Insurer</b>   | <b>Estimate</b> | <b>Actual</b> | <b>Difference</b> |
|-------------------------------------|------------------|-----------------|---------------|-------------------|
|                                     |                  | £               | £             | £                 |
| Property & BI                       | Zurich Municipal | 241,640         | 268,540       | 26,900 *          |
| Terrorism                           | Zurich Municipal | 70,440          | 78,650        | 8,210 *           |
| Money                               | Zurich Municipal | 2,600           | 2,290         | -310              |
| All Risks                           | Zurich Municipal | 24,880          | 24,780        | -100              |
| Fidelity Guarantee                  | Zurich Municipal | 38,000          | 36,980        | -1,020            |
| Personal Accident & Business Travel | ACE Europe       | 6,150           | 6,230         | -80               |

\* The difference arose because the estimates excluded 3 schools that were expected to have converted to Academy status prior to renewal. The schools did not convert and so were included in the 2012/13 renewal. All premiums will be recovered in full from the schools concerned and there will be no impact on the General Fund.

2.7 A full revaluation of the Council's civic regalia and the silver collection in the Williamson Art Gallery was undertaken in the week commencing 25 June. The valuation report is currently awaited.

2.8 Information has been gathered and submitted to insurers ahead of the renewal of the Marine insurance contract on 30 September 2012. Renewal terms are awaited and will be reported to the next meeting of this Committee.

2.9 Hilbre High School converted to Academy status on 1 July. The stand alone insurance package referred to in previous reports has been used. Insurance packages for those schools that had previously converted to Academies have been renewed to a common date of 1 September 2013 to enable a joint marketing exercise to be undertaken next year. St John Plessington Catholic College is in the process of converting to an academy and discussions are on-going in relation to Council support through a stand alone insurance package.

2.10 In respect of joint working Sefton Council requested support and Wirral has begun a peer review of Sefton's insurance and claim handling arrangements. Warrington Borough Council also requested assistance with a similar review but this had to be declined because of insufficient capacity.

### **Risk Management Progress**

2.11 An upgraded version of the Concerto project management system designed to meet the Council's specification in relation to the recording and reporting of risk information was released in mid-July. Testing has identified some minor gaps in functionality that are being addressed by the company.



- 2.12 A review of the Corporate Risk Register was undertaken at the end of Q1 2012/13. The results were included in the Corporate Risk Monitoring Summary that forms an appendix to the Corporate Performance and Financial Review reported to Cabinet in October 2012.
- 2.13 Support was given to the Executive Team in compiling a draft register of key risks to delivery of the draft Improvement Plan presented to Cabinet on 6 September 2012.
- 2.14 A training session providing Members with an introduction to the principles and practice of managing risk was delivered on 17 September 2012.
- 2.15 Members of the Risk & Insurance Team attended the ALARM (Association of Local Authority Risk Managers)) Professional Development Forum in Manchester at the end of June. The seminars and lectures attended included the building of a risk aware culture, the embedding of risk management, the risks associated with collaboration and shared services and the impact of reductions in resources on the Council's legal liabilities. The knowledge gained will be used in developing the Council's Risk Management Framework that is a key project in the Improvement Plan.
- 2.16 The election of a member of the Risk & Insurance Team to the national board of ALARM was confirmed during the Forum. This appointment formalises the Council's leading role in respect of the civil justice reforms process and provides a valuable source of information in developing best practice for both insurable and strategic risk issues.

#### **Insurance Management – Issues for Next Period**

- 2.17 The Council will continue to work with others in taking forward the Lord Justice Jackson Review in connection with the process of reform to civil litigation costs. With a representative on the ALARM Board Wirral continues to play a leading role on behalf of local authorities.
- 2.18 The management of liability claims is expected to continue demanding a substantial part of the available capacity.
- 2.19 The valuation report on the Council's civic regalia and silver collection should be received. This is expected to lead to an increase in the sum insured and consequently the annual premium.
- 2.20 More work will be undertaken in relation to the tender for the Property, Business Interruption, Money, Fidelity Guarantee and Personal Accident/Business Travel insurance.
- 2.21 The Insurance Fund budget for 2013/14 will be compiled and presented to Cabinet in November 2012.

- 2.22 The peer review for Sefton Council will be concluded and findings submitted. Any areas of good practice that can be used to benefit Wirral will be identified and incorporated in Wirral's claims handling and management arrangements.

### **Risk Management – Issues for Next Period**

- 2.23 The Executive Team will undertake the quarter 2 review of the Corporate Risk Register as part of the corporate Performance Monitoring process and the risk arrangements in respect of the Improvement Plan will be reviewed and updated.
- 2.24 The Improvement Plan project to take Risk Management forward through the revision and implementation of a revised Risk Management Framework will be progressed. Cabinet have previously agreed to an approach that factors in the British Standard for Risk Management and recognises best practice from other authorities. This project will initially be progressed through the Chief Executive and Executive Team.
- 2.25 Any outstanding issues concerning the risk functionality of the Concerto system are expected to be resolved.

### **3.0 RELEVANT RISKS**

- 3.1 No decisions are required in relation to this report so there are no relevant risks or opportunities to report.

### **4.0 OTHER OPTIONS CONSIDERED**

- 4.1 These are not applicable in respect of this monitoring report.

### **5.0 CONSULTATION**

- 5.1 No specific consultation has been undertaken with regard to this report.

### **6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

- 6.1 There are no implications arising directly from this report.

### **7.0 RESOURCE IMPLICATIONS**

- 7.1 The Academy Schools initiative continues to generate additional income that is used to offset insurance administration costs and reduce the costs charged to Schools and the General Fund.
- 7.2 Although under pressure there are sufficient resources to deal with insurance responsibilities. However the additional work required as a result of the Improvement Plan project will not be capable of being delivered in full from within existing staff resources and this will be the subject of a future report.

**8.0 LEGAL IMPLICATIONS**

8.1 There are none arising directly from this report.

**9.0 EQUALITIES IMPLICATIONS**

9.1 There are no implications for equality arising from this report which is a monitoring report so an Equality Impact Assessment is not required.

**10.0 CARBON REDUCTION IMPLICATIONS**

10.1 There are none arising directly from this report.

**11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 There are none arising directly from this report.

**12.0 RECOMMENDATION**

12.1 That the progress reported and issues for the next period in respect of Corporate Risk and Insurance Management be noted.

**13.0 REASON FOR RECOMMENDATION**

13.1 Regular update reports are presented to this Committee on the work around Risk and Insurance that seek to support the Risk Management Strategy and maintain the successful management of the Insurance Fund.

**REPORT AUTHOR:** Mike Lane  
Risk & Insurance Officer  
telephone: 0151 666 3413  
email: mikelane@wirral.gov.uk

**REFERENCE MATERIAL / SUBJECT HISTORY**

| <b>Council Meeting</b>   | <b>Date</b>   |
|--|---|
| Audit & Risk Management Committee<br>– Corporate Risk & Insurance Management | A report is presented to each meeting of the Committee. |

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## WIRRAL COUNCIL

### AUDIT AND RISK MANAGEMENT COMMITTEE

19 SEPTEMBER 2012

|                         |   |
|-------------------------|---|
| <b>SUBJECT:</b>         | <b>REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)</b> |
| <b>WARD/S AFFECTED:</b> | <b>ALL</b>  |
| <b>REPORT OF:</b>       | <b>DIRECTOR OF LAW, HR AND ASSET MANAGEMENT</b>           |
| <b>KEY DECISION?</b>    | NO  |

#### 1.0 EXECUTIVE SUMMARY

- 1.1 This report summarises the use of covert surveillance by the Council between 11 June 2012 and 1 September 2012.
- 1.2 This report was requested in the work plan for the Committee.
- 1.3 The report also summarises the outcome of the inspection carried out on 8 June 2012 by Sir David Clarke, Assistant Surveillance Commissioner and recommends some consequential amendments to the existing Policy and Procedure on covert surveillance.

#### 2.0 BACKGROUND AND KEY ISSUES

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public bodies use surveillance methods: The Council may use covert surveillance for the purpose of preventing or detecting crime or preventing disorder.
- 2.2 The origin of RIPA lies in the Human Rights Act 1998 which places restrictions on the extent to which public bodies may interfere with a person's right to respect for his or her home and private life and correspondence during the course of an investigation into suspected criminal activities. The provisions of RIPA ensure (in summary) that any such interferences are in accordance with the law and are necessary and proportionate (i.e. the seriousness of the suspected crime or disorder must outweigh any possible interferences with the personal privacy of the persons being investigated and of persons who associate with them).
- 2.3 The Council's Constitution authorises Directors to designate Heads of Service and Service Managers to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA.
- 2.4 The Office of Surveillance Commissioners (OSC) is responsible for overseeing the operation of RIPA. The OSC inspected the Council on 1 July 2009. The outcome of that inspection was reported to the Committee on 23 September 2009. The Committee approved amendments to the Council's Policy and Guidance Document made in response to the Report.
- 2.5 New Codes of Practice on covert surveillance have been published by the Home Office. As from 1 April 2010 every Council should report quarterly to its Audit and Risk Management Committee on its use of RIPA. The last such report was made to the Committee on 14 June 2012.

2.6 The OSC inspected the Council again on 8 June 2012 Sir David Clarke's report is contained in Appendix 1.

### **3.0 THE USE OF RIPA BY THE COUNCIL**

3.1 Between 11 June 2012 and 1 September 2012 the Council granted 4 authorisations for directed covert surveillance.

3.2 One authorisation was granted to obtain evidence of a possible arson attack on some unoccupied premises.

3.3 Three authorisations were granted to obtain evidence of alleged anti-social behaviour. Anti-social behaviour has included alleged harassment.

### **4.0 CHANGES IN LEGISLATION**

4.1 The Protection of Freedoms Act 2012 has now been enacted. When it comes into force on 1 November 2012 the following changes in the law will affect local authorities.

- Magistrate's approval will be required for a local authority's use of RIPA and will be in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
- Use of RIPA to authorise directed surveillance will be confined to cases where the offence under investigation carries a maximum custodial sentence of six months or more except in relation to underage sales of alcohol and tobacco, where the threshold will not apply.

### **5.0 TRAINING**

5.1 Ibrahim Hasan has provided on 4 September 2012 a full days training to officers on the new legislation in Wallasey Town Hall. He is one of the leading authorities on RIPA.

### **6. INSPECTION BY THE OFFICE OF SURVEILLANCE COMMISSIONER (OSC)**

6.1 Sir David Clarke, Assistant Surveillance Commissioner, visited the Council on 8 June 2012 in order to conduct an inspection of the Council's use of covert surveillance.

6.2 Between 1 July 2009 and 8 June 2012 the Council had authorised 55 instances of directed surveillance of which 35 were for anti-social behaviour, 15 for trading standards prosecutions primarily under-age sales of alcohol, tobacco and fireworks and 5 were to detect flytipping.

6.3 Sir David found that the authorisations granted to detect anti-social behaviour were "well articulated by the applicant and the authorising officer and are a model of their kind". They covered covert surveillance to detect households who were under threat from neighbours of assault and criminal damage. They also included covert surveillance of public areas of housing estates where groups of young people were causing nuisances from noise and rowdiness through to dangerous driving, excessive drinking and alleged drug taking and drug dealing. The covert surveillance was necessary because of the culture of non-cooperation on the housing estates with the

authorities and of witness intimidation and reprisals. Without the covert surveillance evidence of criminal behaviour would not be available for presentation to the Courts in applications for ant-social behaviour orders or proceedings for possession brought by social landlords.

- 6.4 Flytipping authorisations were also of high quality. They may indeed not have been necessary where there were warning notices of CCTV surveillance posted on the approaches to the sites where illegal tipping had occurred.
- 6.5 The Council's training programme was praised as being "particularly commendable". A clear and accessible training register was maintained which was a good practice not always followed in other local authorities.
- 6.6 The central record of authorisations of covert surveillance was being kept accurately and up to date by the Director of Law, HR and Asset Management and in accordance with the recommendations of the Home Office Code of Practice.
- 6.7 All the recommendations made by the previous Inspector in 2009 had been implemented including improvements to the Policy and Procedure, and regular quarterly meetings with the RIPA co-ordinators from each relevant Department to review the authorisations granted in that quarter.
- 6.8 There were regular quarterly reports on authorisations of covert surveillance to the Audit and Risk Management Committee.
- 6.9 Sir David had visited the control room for the CCTV cameras in Wirral and had been satisfied that proper arrangements were in place and being implemented to ensure that there was no unauthorised covert use of the Council's covert CCTV equipment.

## **7. PROPOSED IMPROVEMENTS AND UPDATING OF THE POLICY AND PROCEDURE ON THE USE OF POWERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)**

- 7.1 Sir David made some criticisms of the content of the Council's Policy and Procedure on the use of covert surveillance. In Appendix 2 are some proposed amendments to paragraphs 3.6, 3.13(h), 3.19.1, 4.3, 4.6.3 and 7.1. They are intended to comply with the first recommendation made in Sir David's report. The amendments and additions are not controversial. In addition some amendments have been made to paragraphs 1.3, 1.4 and 3.9 to bring the document up to date.

## **8. AUTHORISATIONS FOR JUVENILE TEST PURCHASE OPERATIONS**

- 8.1 Concerns were expressed by Sir David about the authorisation of directed covert surveillance granted in the Trading Standards Section for the detection of under aged sales of alcohol, tobacco and fireworks. He drew attention to the need to specify in the authorisation the evidence which led the Trading Standards Section to suspect offences were being committed in a particular retail outlet. Only if such evidence were set out and evaluated would it be possible for the use of covert surveillance to be necessary and proportionate. Blanket test purchases from retail outlets by children under the direction of Trading Standards Officers could not be justified and could be regarded as "fishing expeditions" which were neither necessary nor proportionate.

- 8.2 Future authorisations for juvenile test purchase operations must therefore be more restricted in scope and care must be taken to address the issues of necessity and proportionality in relation to targeted premises as recommended by Sir David in his second recommendation.
- 8.3 Future authorisations will be monitored to ensure that Sir David's recommendations are carried out. In addition as from 1 November 2012 there will be a requirement for magistrates approval before any covert surveillance can be authorised by the Council.

## **9.0 RELEVANT RISKS**

- 9.1 Less effective prosecution of instances of anti social behaviour when the use of covert surveillance by local authorities is curtailed by the new legislation.
- 9.2 Persistent anti-social behaviour may from 1 November 2012 only be detected by the use of covert surveillance if it has the prior approval of a magistrate and if it consists of criminal offences attracting a maximum term of imprisonment of 6 months or more. Shouting, swearing, playing loud music, banging on walls and doors, and intimidating behaviour will no longer be capable of being detected by covert surveillance unless they form part of a campaign of harassment targeted at a particular individual which may amount to an offence under the Protection from Harassment Act 1997. The perpetrators of such persistent behaviour may therefore go unpunished through the Courts. Malicious complaints of such behaviour may also go undetected.

## **10.0 OTHER OPTIONS CONSIDERED**

10,1 None.

## **11.0 CONSULTATION**

11.1 None.

## **12.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

12.1 None.

## **13.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

13.1 None at present.

## **14.0 LEGAL IMPLICATIONS**

14.1 The Protection of Freedoms Act 2012 which restricts local authorities use of covert surveillance comes into force on 1 November 2012 and may require the Council to review further its policy and procedure as the new law is applied by the courts.

## **15.0 EQUALITIES IMPLICATIONS**

15.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality.

## **16.0 CARBON REDUCTION IMPLICATIONS**

16.1 None.



## 17.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

17.1 See paragraph 4.

## 18.0 RECOMMENDATION/S

18.1 That the Committee note the contents of the report on the use of covert surveillance.

18.2 That the Committee approve the amendments and additions to the Council's Policy and Procedure on RIPA as advised by the OSC and as contained in Appendix 2.

18.3 That the Committee approve the OSC's recommendations on the use of RIPA to detect under age sales of alcohol and tobacco.

18.4 That the Committee recommend to the Cabinet that it adopts on behalf of the Council the recommendations in 18.2 and 18.3 above.

## 19.0 REASON/S FOR RECOMMENDATION/S

19.1 The Home Office Code of Practice on covert surveillance requires every Council to report quarterly on its use of RIPA.

19.2 It is necessary for the Council to amend its Policy and Procedure on the use of RIPA in order to comply with the recommendations of the OSC arising from their inspection on 8 June 2012 and with the change in the law which comes into effect on 1 November 2012.

**REPORT AUTHOR:** **Colin Hughes**  
Group Solicitor  
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## APPENDICES

Appendix 1 Report of the Assistant Surveillance Commissioner on his inspection carried out on 8 June 2012.

Appendix 2 Proposed amendments to the Council's Policy and Procedure on RIPA.

## REFERENCE MATERIAL

Authorisations for directed surveillance - exempt from publication because they relate to individuals and are the subject of continuing investigations into alleged criminal behaviour.

## SUBJECT HISTORY (last 3 years)

| Council Meeting                                  | Date                  |
|--|-----------------------|
| Reports to the Audit & Risk Management Committee | 23 September 2009     |
|  | 30 June 2010          |
|  | 28 September 2010     |
|  | 22 November 2010      |
|  | 28 March 2011         |
|  | 30 June 2011          |
|  | 28 September 2011     |
|  | 1 February 2012       |
|  | 14 June 2012          |
|  | Report to the Cabinet |

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**APPENDIX 1**

**REPORT OF SIR DAVID CLARKE**

**ASSISTANT SURVEILLANCE COMMISSIONER**

**26 JUNE 2012**



Office of Surveillance  
Commissioners

28 JUN 2012



Chief  
Surveillance  
Commissioner

Restricted

26 June 2012

*Ian M. Coleman*

Covert Surveillance

On 8 June 2012, an Assistant Surveillance Commissioner, Sir David Clarke, visited your Council on my behalf to review your management of covert activities. I am grateful to you for the facilities afforded for the inspection.

I enclose a copy of Sir David's report which I endorse. I am pleased to see that your Council shows a strong commitment to maintaining high standards of RIPA compliance and you have a particularly commendable training programme. The defects found in trading standards authorisations can be readily addressed in accordance with the second recommendation.

The two recommendations are that your policy document be further amended in the light of paras 12 and 14 of the report and that authorisations for juvenile test purchase operations be more restricted in scope with care taken in addressing necessity and proportionality in relation to particular premises targeted.

I shall be glad to learn that your Council accepts the recommendations and will see that they are implemented.

One of the main functions of review is to enable public authorities to improve their understanding and conduct of covert activities. I hope your Council finds this process constructive. Please let this Office know if it can help at any time.

*Yours sincerely,  
Christopher Rose*

Mr Ian Coleman  
Acting Chief Executive  
Wirral Council  
Town Hall,  
Brighton Street  
Wallasey  
Wirral  
Merseyside, CH44 8ED

**RESTRICTED**



**Office of Surveillance  
Commissioners**

**OFFICE OF SURVEILLANCE COMMISSIONERS**

**INSPECTION REPORT**

**Metropolitan Borough of Wirral**

**8<sup>th</sup> June 2012**

**Assistant Surveillance Commissioner:  
Sir David Clarke**

**RESTRICTED**

## **RESTRICTED covering CONFIDENTIAL**

### **DISCLAIMER**

This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

The report is sent only to the recipient of the Chief Surveillance Commissioner's letter (normally the Chief Officer of the authority inspected). Copies of the report, or extracts of it, may be distributed at the recipient's discretion but the version received under the covering letter should remain intact as the master version.

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**RESTRICTED**



Office of Surveillance  
Commissioners

Office of Surveillance Commissioners,  
PO Box 29105,  
London,  
SW1V 1ZU.

10<sup>th</sup> June 2012

**METROPOLITAN BOROUGH OF WIRRAL**

**INSPECTION REPORT**

Inspection date 8<sup>th</sup> June 2012

Inspector Sir David Clarke  
Assistant Surveillance Commissioner

**Wirral Borough Council**

1. The Council (WBC) is a unitary authority serving a mainly urban population of about 310,000 in Merseyside.
2. The Senior Corporate Management structure is headed by the Chief Executive, supported by six Service Directors. The Acting Chief Executive is Ian Coleman, whose address is Wirral Council, Wallasey Town Hall, Brighton Street, Wallasey, Wirral CH44 8ED.
3. The Director of Law, Human Resources and Asset Management is Bill Norman, who is designated Senior Responsible Officer (SRO) for RIPA matters.
4. The most recent OSC inspection of WBC was conducted by Graham Wright, Surveillance Inspector, accompanied by Kevin Davis, on 1<sup>st</sup> July 2009. In his report dated 10<sup>th</sup> July 2009, Mr Wright reported that all previous recommendations were discharged but made three fresh recommendations of his own.
5. WBC is a frequent user of its RIPA powers, having granted 55 directed surveillance authorisations since the last inspection.
6. None of these applications had used the urgency provisions, none was concerned with the likely acquisition of confidential information, and none concerned Covert Human Intelligence Sources (CHIS).

**Inspection**

7. I carried out the inspection on 8<sup>th</sup> June 2012 at Wallasey Town Hall. I met the following council officers:
  - Ian Coleman, Acting Chief Executive;
  - Bill Norman, Director of Law, Human Resources and Asset Management;
  - Colin Hughes, Group Solicitor, Legal and Member Services<sup>1</sup>;
  - Caroline Laing, a Service Manager in the Children and Young Persons Department, an Authorising Officer;
  - Derek Payet, Trading Standards Strategic Manager, an Authorising Officer.
8. The inspection started with a discussion, primarily with Mr Norman and Mr Hughes, of WBC's RIPA management, policy and procedures, the designated authorising officers (AOs), training, and the actions taken on the recommendations in the last OSC report. I then inspected the Central Record and a sample of the RIPA authorisations themselves. I then met Mr Norman, Miss Laing and Mr Payet for a feedback discussion before departing the Town Hall.
9. I then visited WBC's CCTV control room at Cheshire Lines Building, Canning Street, Birkenhead, where I met the following:
  - Robert Henderson, Head of Regulation Division;
  - Tom Almond, the CCTV operator on duty.
10. I am grateful to all concerned, particularly Mr Hughes who made the arrangements and provided the pre-inspection reading materials, for their helpful cooperation which greatly eased my task.

### RIPA Structure

11. WBC has a concise and clear *Policy and Procedure on the use of powers under RIPA* in place. In his 2009 report, Mr Wright recommended a number of improvements, which were duly made and approved formally by the appropriate committee of the council. *His first recommendation is therefore discharged.*
12. In discussion I made a number of suggestions for further improvement, as follows:
  - (a) In paragraph 3.6, it should be made clear that *private information* is not limited to *a person's private or family life* (as presently stated), but includes the way in which he conducts himself in his working life<sup>2</sup>;
  - (b) In paragraph 3.13 (or in an Appendix), the designated AOs should be listed;
  - (c) In paragraph 3.19.1, it should be made clear that any audio recording device must not be capable of picking up conversations within the home targeted (rather than *should not normally*, as presently stated).

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<sup>1</sup> The Head of Legal and Democratic Services, Surjit Tour, was on leave on the day of my inspection

<sup>2</sup> Code of Practice on Covert Surveillance etc., paragraph 2.4



13. Mr Wright commented in 2009 that the *Policy* included little guidance in respect of CHIS. In response to this, the CHIS section (paragraphs 4.1-4.6) was usefully expanded. It accurately describes two scenarios in which the issue of CHIS may arise – a private detective posing as a tenant to obtain information about antisocial behaviour, and a trading standards test purchaser who goes beyond the basic transaction and engages the trader in further discussion to obtain further information.
14. These are both situations in which the source is tasked to obtain information. In discussion, however, I drew attention to paragraph 2.22 of the CHIS Code of Practice, pointing out that a CHIS problem may arise without any tasking. When an informant gives repeat information about a suspect or about a family, and it becomes apparent that the informant may be obtaining that information in the course of a family or neighbourhood relationship, alarm bells should begin to ring. It probably means that the informant is in reality a CHIS, to whom a duty of care is owed if the information is then used, even though he or she has not been tasked by the public authority to obtain information on its behalf. This needs to be made clear in the *Policy* document, perhaps with an exhortation to refer any such instance for legal advice before acting on the information received from such an informant.

**See recommendation I**

15. WBC has never made a CHIS authorisation, and remains unlikely to do so. The *Policy* provides that any CHIS authorisation may only be made by the Chief Executive<sup>3</sup>. I was told that this provision arose from the concerns of an elected member.
16. Mr Norman is SRO for RIPA. Mr Tour is formally keeper of the Central Record, but the task is delegated to Mr Hughes who has day-to-day control. The Record complies fully with paragraph 8.1 of the Covert Surveillance Code of Practice, and I found no discrepancies between it and the authorisations themselves.
17. Mr Hughes holds a quarterly meeting with RIPA coordinators from each relevant department of WBC, reviewing the authorisations granted in that quarter, thus providing the quality assurance found by Mr Wright to be lacking in 2009. *Mr Wright's second recommendation is therefore discharged.*
18. A quarterly report of RIPA usage and issues is made to the Audit and Risk Management Committee of WBC, which therefore complies with the best practice recommended in paragraph 3.30 of the Code of Practice.
19. Following a number of retirements and other departures, there are only three designated AOs in WBC. One of these is presently suspended from his post awaiting disciplinary proceedings. It is accepted that two is an insufficient number of AOs in an authority of this size making substantial use of its RIPA powers. WBC has already arranged that the new Head of the Antisocial

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<sup>3</sup> It is conventional, and indeed a requirement of the CHIS Code of Practice (paragraphs 4.22-4.23 and Annex A), that only the Chief Executive may authorise a vulnerable or juvenile CHIS, but this restriction does not apply to CHIS authorisations in general

Behaviour Team, a Service Manager of appropriate status, will attend the next training session and will then be designated as an AO; accordingly no formal recommendation is required.

### Training

20. An annual training day is held for all AOs and RIPA applicants, the training being delivered by Ibrahim Hassan of Act Now Training. This year's training day was delayed in the expectation that section 38 of the Protection of Freedoms Act 2012 would come into force, but it is to proceed in September in any event.
21. A clear and accessible training register is maintained, which is a good practice not always followed elsewhere.

### Examination of Records

22. The 55 directed surveillance authorisations in the three-year period under review can be subdivided as follows:
  - 35 for antisocial behaviour, of which I examined the most recent five;
  - 15 for trading standards (primarily under-age sales), of which I examined three;
  - 5 for fly-tipping, of which I examined two.
23. I found that the RIPA1 authorisation form in use was not the current version, in that the paragraph references to the Codes of Practice relate to the earlier Codes preceding the 2010 revisions. In particular, the important box for "collateral intrusion" has a wrong reference and is therefore misleading. This has been immediately remedied by downloading the full set of current forms from the Home Office website, so that no formal recommendation is required.
24. In the antisocial behaviour and fly-tipping cases, correct expiry dates and proper reviews were consistently set, and in all cases cancellations were timely and appropriate.
25. The antisocial behaviour cases can be further subdivided. Some were for surveillance of public areas of housing estates, where groups of young people habitually congregated and caused nuisances ranging from noise and rowdiness, through dangerous driving, excessive drinking and drug taking, to brazen drug dealing. In some cases the targeted individuals were already subject to ASBOs and believed to be in persistent breach. These housing estates are areas in which there is a culture of non-cooperation with the authorities and of witness intimidation and reprisals. The authorisations were well articulated by the applicant and the AO and are a model of their kind. One in particular, concerning a 12-year-old boy already under an ASBO, was very carefully considered by the AO, referring to:

*... the negative impact the target's behaviour has had on the local community and that he is getting away with the order on a regular basis ... undermining the justice system and public confidence ... if*

*there had only been one or two breaches it could be argued the surveillance is not proportionate, but there have been numerous breaches and efforts by the ASBO team and the police to catch him have failed”.*

26. The other category concerns feuding neighbours, where a household is targeted by a near neighbour's family with threats, assaults and criminal damage. The authorised surveillance involved the installation of covert CCTV (with audio) in the targeted house, trained on the front and roadway outside. Again, these were well argued and appropriate.
27. The fly-tipping authorisations were likewise of high quality, though they were all cases in which the CCTV surveillance was not (or may not have been) truly covert in that warning notices of CCTV surveillance were posted on the approach to the sites where illegal tipping had occurred. WBC were clearly adopting a belt-and-braces approach, and may feel that they can safely proceed without RIPA authorisation when section 38 of the 2012 Act (adding sections 32A and 32B to RIPA) is brought into force.
28. The trading standards authorisations were for juvenile test purchase operations, each one planned to take place on a single evening. One, on 4<sup>th</sup> November 2011, was for the sale of fireworks; the remainder for alcohol and tobacco. Perhaps understandably, the AO set very short expiry dates, each authorisation to expire within a day or two after the planned operation was completed. Accordingly, no review dates were set.
29. This is an incorrect method of achieving a proper objective. All directed surveillance authorisations must be set to expire at 2359 hrs on the last day of the three month period from the date of authorisation, in accordance with the prompt on the form itself. The correct way to achieve the objective is to set an early review date and to cancel on review. It is right to add, however, that these authorisations were not left to lapse; all were properly and formally cancelled.
30. More importantly, I am a little troubled that the authorisations were for test purchases at a large number of shop premises, some 20 in number. Different considerations of necessity and proportionality may have affected different shops in the list; some may have been previously visited and warned, or been the subject of specific intelligence; others merely situated in the vicinity of juvenile drinking locations<sup>4</sup>.
31. The fireworks authorisation did not list the shops encompassed within it. It named two shops, plus *“the list of premises provided by the Fire Brigade (attached)”*. No such list is attached to the retained RIPA forms, so it is impossible to see how many test purchase visits were authorised.
32. In the case of each of these authorisations, the cancellation form showed that eight tests were made and that one sale took place. So it seems that many of the shops were not tested, despite the applicant's assertion, and the AO's

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<sup>4</sup> See OSC Procedures and Guidance, December 2011 revision, paragraph 262

**David Clarke**  
**Assistant Surveillance Commissioner**

agreement, that to test each of them was necessary. This might render the entire authorisation susceptible to challenge.

33. For the future, the remedy is to seek authorisation only in relation to those retail outlets which there is specific reason to test, and then to follow it through in relation to each: A single authorisation, not so tightly limited in time, can properly cover a multiple test purchase operation which is not limited to a single day, so long as the issues of necessity and proportionality are sufficiently addressed in relation to each of the premises to be visited.

See recommendation II

## CCTV

34. WBC operates a network of some 100 CCTV cameras in locations throughout the borough, monitored by WBC operators from a control room at Cheshire Lines. These are operated under a protocol between WBC and Merseyside Police which I was shown. Most of the cameras incorporate a 28-day automatic recording facility.
35. I was shown the Control Room handbook, the daily log and the CCTV viewing book. The viewing book primarily records instances of the police attending to view recorded material, i.e. evidence-gathering as opposed to real-time surveillance. But it also contains some (highlighted) instances of police attendance to carry out real-time surveillance, in which case the serial number of the police RIPA authorisation is recorded. I was shown the retained copy of the police notification of RIPA authorisation.
36. My visit was made without prior warning to the operator on duty. I am satisfied that the arrangements in place provide suitable safeguards against any unauthorised covert use of WBC's overt CCTV equipment.

## Conclusion

37. WBC exhibits a strong commitment to maintaining high standards of RIPA compliance. Their training programme is particularly commendable. The defects which I found in the authorisations emanating from one department can be readily addressed in the light of this report.
38. I make the following

## Recommendations

- I. *That WBC's RIPA policy document be further amended in the light of paragraphs 12 and 14 of this report;*
- II. *That future authorisations for juvenile test purchase operations be more restricted in scope, care being taken to address the issues of necessity and proportionality in relation to the targeted premises.*

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## REPORT TO THE AUDIT AND RISK COMMITTEE ON 19 SEPTEMBER 2012

### APPENDIX 2

#### PROPOSED AMENDMENTS AND ADDITIONS TO THE POLICY AND PROCEDURE

##### Paragraph 1.3

Delete the last sentence and replace with:

"In 2011/2012 twenty authorisations for directed surveillance were granted by the Council's authorising officers."

##### Paragraph 1.4

Replace the second sentence with the following:

"The Council has been inspected four times by the Office of the Surveillance Commissioner in 2003, 2007, 2009 and 2012."

##### Paragraph 3.6

Add the following final sentence:

"It includes the way in which a person conducts himself in his working life."

##### New Paragraph 3.9

"From 1 November 2012 a magistrates approval will also be required for the Council's use of RIPA and will be in addition to the authorisation needed from an authorising officer. Magistrates may only grant approval for the use of covert surveillance where the criminal offence under investigation carries a maximum custodial sentence of six months or more except in relation to the offences of under age sales of alcohol and tobacco where this threshold will not apply."

##### New Paragraph 3.14(h)

"The designated authorising officers are currently David Green (Director of Technical Services), Derek Payet (Trading Standards Strategic Manager), Caroline Laing (Deputy Head of Wirral Youth and Play Service), Celine Gafos (Deputy Head Targeted Youth Support Services), Robert Clifford (Service Manager, Technical Services Department) and Mark Smith (Head of Service, Streetscene and Waste).

They have delegated authority to apply to the magistrates for approval of covert surveillance and to authorise named officers to make such applications on behalf of the Council.”

#### Paragraph 3.19.1 (new paragraph 3.20.1)

Replace the second sentence of the second paragraph with the following:

“The recording device must not be capable of picking up conversations at a normal level within the home targeted (and consequently is not intrusive).”

#### New Paragraph 4.3

“It should be borne in mind that a person can become a covert human intelligence source if he regularly supplies information to the Council without being asked to do so provided he obtains the information by virtue of his personal relationship with the suspect or his associates and not for example by merely noting down passively evidence of crime or disorder as a member of the public. In such circumstances legal advice should be sought before acting on the information received from the informant.”

#### Paragraph 4.6.3

Add the following paragraph:

“The Anti-Social Behaviour Team regularly receives information from a member of the family of a suspected perpetrator who volunteers to provide evidence without being requested to do so. The informant is performing the function of a CHIS if the information has been obtained as a result of the family relationship.”

#### Paragraph 7.1

Delete the last sentence and replace with the following:

“The departmental co-ordinators and authorising officers are listed in paragraph 3.14(h). That list may be amended from time to time as new Directors and Heads of Service are appointed. The current list can be obtained from the Head of Legal and Member Services.”

#### Paragraph 7.2

Delete the third sentence and replace by:

“A copy of the register can be obtained from the Head of Legal and Member Services.”



# POLICY AND PROCEDURE ON THE USE OF POWERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT

## 1. INTRODUCTION

- 1.1 *"Surveillance plays a necessary part in modern life. It is used not just in the ~ targeting of criminals but as a means of protecting the public from harm and ~ preventing crime."*

From the Foreword to the Home Office's Code of Practice on Covert Surveillance

- 1.2 The use of covert surveillance by public authorities, particularly local authorities has been the subject of much recent debate. The use of covert surveillance is properly a matter of public concern. The purpose of this policy is to set out exactly how the Council will use its surveillance powers and comply with best practice.
- 1.3 **Councils may only use covert surveillance for the purpose of preventing or detecting crime or preventing disorder and where doing so is in the public interest.** The Council uses covert surveillance to support its enforcement activities. It has been used principally by the Regeneration Department in dealing with anti-social behaviour and trading standards cases. This has resulted in many successful cases being brought which might otherwise not have been possible bringing rogue traders to account and improving the lives of Wirral residents suffering from severe anti-social behaviour. In 2009/10 twelve authorisations for directed surveillance were granted by the Council's authorising officers.
- 1.4 The Council approved a policy and procedure for the use of covert surveillance in 2004. The Council has been inspected three times by the Office of the Surveillance Commissioner in 2003, 2007 and 2009. The use of surveillance was also the subject of a review by the Council's Internal Audit Team in 2008. The need to revise and update the Council's Policy and Procedure was identified as part of that review.

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## 2. RELEVANT LEGISLATION

### 2.1 The Human Rights Act 1998 (HRA)

2.1.2 The HRA gives effect to the rights and freedoms guaranteed under the European Convention on Human Rights and Fundamental Freedoms ("the Convention"). Article 8 of the Convention is relevant in the context of covert surveillance in that everyone has the right to respect for his/her private and family life, home and correspondence. It is now clear from decided cases that this right extends to activities of a professional or business nature and so includes employees. Article 6 of the Convention is relevant in the context of covert surveillance in that everyone has the right to a fair trial, including internal procedures or hearings, and fairness extends to the way in which evidence is obtained.

2.1.3 Consequently, there is to be no interference with the exercise of these rights by any public authority, except where:

Such interference is in accordance with the law and is necessary in a democratic society in the interests of:

- national security
- public safety
- the economic well-being of the country
- for the prevention of disorder or crime
- for the protection of health or morals
- the protection of the rights and freedoms of others.

The Council is a public authority. However, as mentioned above (and explained in more detail in section 3 below), local authorities may **only** undertake covert surveillance for the purpose of preventing or detecting crime or preventing disorder.

2.1.4 The HRA can be found at:

[www.opsi.gov.uk/ACTS/acts1998/19980042.htm](http://www.opsi.gov.uk/ACTS/acts1998/19980042.htm)

2.2 **The Regulation of Investigatory Powers Act 2000 ("RIPA")** (and associated Regulations)

2.2.1 RIPA was introduced shortly after the HRA to ensure that the use by public bodies of surveillance was codified. Prior to RIPA there was only limited regulation of the use by public bodies of surveillance. RIPA was passed to ensure a consistency of approach and to set in place safeguards to ensure that the use of surveillance is proportionate.

2.2.2 RIPA was passed well before the terrorism attacks on September 11 and was not introduced to deal with terrorism. RIPA and its associated regulations also follow the philosophy of recent legislation in trying to strike a balance between community responsibilities, including effective law enforcement, and individual rights and freedoms.

### 3.0 COVERT SURVEILLANCE

3.1 The term surveillance includes

- Monitoring, observing or listening to people, their movements, their conversations or their other activity or communication;
- Recording anything monitored, observed or listened to in the course of surveillance;
- Surveillance by or with the assistance of a surveillance device.

3.2 **Covert** surveillance is surveillance that is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place. This needs to be contrasted with the deployment of **overt** surveillance. The use of such surveillance in places to which the public has access is increasingly commonplace. The Council has employed it in the form of CCTV monitoring of its offices, car parks and the town centres. CCTV monitoring is undertaken in accordance with the Council's Code of Practice for the operation of CCTV. CCTV is usually clearly marked through the use of signage.

3.3 RIPA applies where any covert surveillance of an identifiable or named person is carried out by a public authority carrying out an investigatory function. RIPA includes a local authority within the description of public authority.

3.4 Covert surveillance can be either

- (a) **intrusive**, that is, carried out in relation to anything that is taking place on any residential premises or in any private vehicle by an individual or a surveillance device on the premises or in the vehicle; or
- (b) **directed**, that is, undertaken for the purposes of a specific investigation or operation and involving the observation of a person or persons in order to gather information about them.

3.5 **Local authorities are not authorised to conduct intrusive surveillance.**

3.6 **Directed** covert surveillance that is likely to result in obtaining private information about a person is permitted by RIPA and its associated regulations if such surveillance has been authorised in the manner provided by the Act, the Home Office Code of Practice and the prescribed standard forms. Private information is any information relating to a person's private or family life.

3.7 An authorising officer for a public authority may only grant authorisation to carry out directed surveillance if it is necessary in the interests of:

- national security (**not** applicable to local authorities);
- preventing or detecting crime or of preventing disorder;
- public safety (**not** applicable to local authorities);
- protecting public health (**not** applicable to local authorities);
- assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department (**not** applicable to local authorities); or
- is specified by regulations.

3.8 Local authorities may only authorise use of covert directed surveillance on the ground that it is necessary in the interests of preventing or detecting crime or of preventing disorder. The use of surveillance must also be proportionate to what is being sought to achieve.

3.9 Authorisation is not required to record things which are not planned but arise in the course of an investigation. For example if an enforcement officer is attending a property to visit a witness and observes a neighbour causing criminal damage he/she can record what they saw without authorisation.

3.10 Particular care needs to be taken when the surveillance may give rise to the obtaining of **confidential information**. In this context confidential information means:

- Where legal professional privilege applies;
- Confidential personal information; or
- Confidential journalistic material

**Legal professional privilege** will apply to oral and written communications between a professional legal adviser and his/her client made in connection with the giving of legal advice or in connection with or contemplation of legal proceedings.

**Confidential personal information** is information held in confidence about a person's physical or mental health or to spiritual counselling or assistance. The information must have been created or acquired in the course of a trade, business or profession or for the purpose of any paid or unpaid office.

**Confidential journalistic material** includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence.

If the purpose of the surveillance is to obtain confidential information then this will need to be approved by the Head of Legal and Member Services and the Chief Executive. If in the course of an operation confidential material is obtained through surveillance this must be notified immediately to the Head of Legal and Member services. It must be retained and provided to the inspector from the Office of the Surveillance Commissioner at the next inspection.

- 3.11 An applying officer wishing to use directed surveillance must complete **FORM RIPADS1** (all forms are attached to this policy). The applying officer must fully complete all parts of the form. The officer should refer as necessary to the Home Office Code of Practice, available as set out in paragraph 3.18 below.
- 3.12 The applying officer must consider the proportionality of the use of surveillance. The officer must consider the seriousness of the matter being investigated, the impact that any evidence obtained through the surveillance will have on the investigation and the level of intrusion which will be caused. The officer must take steps to ensure that any intrusion is kept to the minimum level necessary. Any intrusion in to the private life of persons not the subject of the investigation (e.g. family or visitors) should be minimised.
- 3.13 The completed form should be referred to an **authorising officer**. All Chief Officers may designate officers within their department as authorising officers for the purposes of RIPA. On receipt of the form the authorising officer will contact the Head of Legal and Member Services to obtain a unique reference number. The authorising officer must be a Director or a Head of Service or Service Manager. The authorising officer will place the form on the central register. The register is an electronic folder with access rights limited to authorising officers (for their area only) and the Head of Legal and Member Services or his/her nominated representatives (to all contents). When an authorising officer places a form on the register he/she will also separately notify the Head of Legal and Member Services by e-mail that this has been done. If the authorising officer does not have access to the register he or she will e-mail the form to the Head of Legal and Member Services who will arrange for it to be placed on the register. All forms for authorised applications shall be placed on the register immediately. All applications shall remain on the register for at least 3 years. Officers should ensure that when they complete the authorisation forms they comply with the following requirements:
- (a) the information on which an investigation is based must be clearly identified
  - (b) applications should state clearly why the covert activity is believed to be necessary and proportionate.
  - (c) Authorising Officers should clearly state why they consider the covert activity is necessary and proportionate (including the steps to be taken to minimise intrusions into privacy, particularly of those persons not suspected of crime or disorder). They must never be granted retrospectively.

- (d) Authorising Officers must describe accurately all the covert activity which they are authorising so as to ensure that the limits are not infringed.
- (e) Technical feasibility studies should be presented to the Authorising Officer along with the application for authorisation. They should be attached to the authorisation. If the authorisation is granted, the person carrying out technical installations (e.g. of cameras and sound recording equipment) must see the relevant parts of the authorisation prior to the installation of any surveillance equipment.
- (f) Review dates should be stipulated by Authorising Officers at the time they authorise the covert surveillance for any extended period. This is to ensure that the need for continuation of the surveillance is regularly assessed and recorded on Form RIPAD52 and that (where appropriate) authorisations are either renewed (before they expire) on Form RIPAD54 or cancelled on Form RIPAD53.
- (g) Cancellations of authorisations should be made promptly when the need for covert surveillance has ceased. The cancellation should contain a full description of the activity which has been authorised, what the results of the surveillance were, and how and when any products of the surveillance will be stored, retained or destroyed.

### 3.14 Urgent Oral Applications

3.14.1 It is possible to grant urgent oral authorisations. It is envisaged that this will be done very rarely, if ever. No authorisations have been granted in this way in the past 3 years. The Code of Practice states that this should not be done:

*unless the time that would elapse before the authorising officer was available to grant the authorisation would, in the judgement of the person giving the authorisation, be likely to endanger life or jeopardise the investigation or operation for which the authorisation was being given. An authorisation is not to be regarded as urgent where the need for an authorisation has been neglected or the urgency is of the authorising officer's own making.*

3.14.2 Where an urgent authorisation is granted the authorising officer must record as soon as is practicable the reasons for granting the authorisation urgently. An urgent authorisation will lapse after **seventy two hours**.

### 3.14 Review/Cancellation

3.15.1 Written authorisations will lapse automatically unless they are renewed after **3 months**. However, authorisations should be reviewed on a regular basis and cancelled when they are no longer required for the purpose for which they were granted. In each case the authorising officer within each public authority should determine how often a review should take place. This should be as frequently as is considered necessary and practicable. On carrying out a review the authorising officer should complete a **Form RIPADS2**. Once

completed the form should be placed on the central register immediately either by the authorising officer directly or via the Head of Legal and Member services. If the form is placed directly on the register the authorising officer must notify the Head of Legal and Member Services that this has been done by e-mail.

3.15.2 If upon review the need for directed surveillance no longer exists then the authorisation will be cancelled immediately. On cancellation the authorising officer shall complete **Form RIPADS3**. The completed form shall be placed on the central register either by the authorising officer directly or via the Head of Legal and Member services. If the form is placed directly on the register the authorising officer must notify the Head of Legal and Member Services that this has been done by e-mail.

### 3.16 Renewal

If the authorisation is due to lapse it may be renewed for a period of a further 3 months provided the need for the surveillance continues. If a renewal is required a **Form RIPADS4** shall be completed. If an authorisation is renewed for a further period of 3 months it should be reviewed during that period.

### 3.17 Audit Checks

The Head of Legal and Member Services shall carry out a regular audit of authorisations contained on the central register at least once every 3 months.

### 3.18 Code of Practice

The Home Office Code of Practice on the Use of Covert Surveillance can be viewed at: <http://security.homeoffice.gov.uk/ripa/publication-search/general-publications/ripa-cop/index.html>

3.19 The following examples illustrate the circumstances in which it is necessary and appropriate to obtain authorisation for covert surveillance:

3.19.1 Residents report to the Anti-social Behaviour Team that the occupants of a neighbouring property are disturbing them at night by engaging in noisy parties or quarrels fuelled by the consumption of alcohol and threaten them with violence when they protest.

In such circumstances covert surveillance (e.g. by means of a camera and sound recording devices unobtrusively fitted to an adjoining property) would be necessary to prevent crime and disorder (because witnesses are likely to be intimidated) and proportionate (the disturbance is frequent and at a high level). The recording device should not normally be capable of picking up conversations at a normal level within the home targeted (and consequently is not intrusive). The Authorising Officer must therefore have available a technical feasibility study.

The amount of collateral intrusion on the privacy of the persons should be low (if the device is directed only at the targeted property) and if the need for continual surveillance is regularly reviewed by the Authorising Officer to ensure that the recording device is removed (when, for example it becomes apparent that the antisocial behaviour has ceased or significantly diminished) Those fitting the recording device must be shown that part of the authorisation which defines the permitted coverage of the camera so that the limits of the authorisation are not infringed.

3.19.2 The police approach the operators of the Council's CCTV cameras and ask them to train their cameras on a particular part of a public place where they suspect drug dealers are doing business. Council staff may only comply with the request of the police if they are satisfied that the police officers have obtained the necessary authorisation for directed surveillance from their superiors. Whilst the cameras are overt, they would be used for the purposes of a specific investigation or specific operation and therefore that use would require authorisation. Members of the public would not normally expect public cameras to be trained on specific individuals or on specific public places for protracted periods and therefore their use in that instance would be covert. The same principles would apply if Trading Standards Officers requested the use of CCTV cameras to monitor the activities of suspected illegal traders in a prohibited street. Authorisation for directed surveillance would be required before the CCTV cameras could be used for that purpose.

3.20 The Head of Legal and Member Services will compile and maintain electronically a central record of authorisations granted by authorising Officers. That central record shall contain the following information about the authorisation:

- (a) Whether it is for Directed Surveillance or Covert use of Human Intelligence Source.
- (b) Its unique reference number.
- (c) Applicant's name and title.
- (d) Department and Section.
- (e) Identity of Target and the title of the investigation.
- (f) Date of authorisation.
- (g) Renewal Date and name and/or title of Authorising Officer.
- (h) Review Date.
- (i) Whether the urgency provisions were used and, if so, why?
- (j) Whether the investigation is likely to result in obtaining confidential information.



(k) Cancellation Date.

The information contained in the Central Record will be used by the Head of Legal and Member Services to monitor the use by departments of RIPA. It will be a standing item on the agenda of the quarterly meetings of the Coordinators Group referred to in paragraph 7.1.

- 3.21 The Director of Law, HR and Asset Management has been appointed the Senior Responsible Officer to perform the duties of that office set out in the Home Office Codes of Practice. These include liaising with OSC Inspectors and taking steps to ensure compliance with RIPA and the Codes by authorising officers.

#### 4.0 COVERT HUMAN INTELLIGENCE SOURCES (CHIS)

- 4.1 The use of CHISs is also regulated by RIPA. A CHIS is a person who establishes or maintains a relationship with someone in order to obtain information, to provide another person with access to information or to disclose information as a consequence of that relationship. Should an officer consider the use of a CHIS as necessary, they must liaise with the Head of Legal and Member Services. If the use of a CHIS is deemed necessary, special arrangements will be made for their use in accordance with the Home Office Code of Guidance on Covert Human Intelligence Sources (see paragraph 4.5 below). It is not anticipated that CHISs will be used often by the Council. However, if professional witnesses are used they may fall within the definition of CHISs. Only the Chief Executive can authorise the use of a CHIS.

- 4.2 If an investigating officer does believe that the use of a CHIS is necessary in the course of an investigation he/she should complete **FORM RIPACHIS1**. The officer must consider the safety and welfare of a person acting as a source and must carry out a risk assessment before authorisation is granted. The use must be proportionate to what is intended to be achieved. The authorisation will lapse automatically if not renewed after a period of **12 months**.

- 4.3 Special considerations apply if the person to be used as a source is **vulnerable** or a **juvenile**. In such circumstances advice should be sought from the Head of Legal and Member Services. Authorisation may only be granted by the Chief Executive, as Head of Paid Service.

- 4.4 The same procedures outlined above in respect of directed surveillance of:

- Maintenance of a central register
- Confidential information
- Review
- Cancellation
- Renewal; and
- Audit checks

Shall also apply to the use of CHISs. The following forms shall be used **FORM RIPACHIS2** (review), **FORM RIPACHIS3** (cancellation) and **FORM RIPACHIS4** (renewal)

- 4.5 The following examples illustrate the circumstances in which it is necessary and proportionate to obtain authorisation for the use of a CHIS (Covert Human Intelligence Source).
- 4.5.1 The Anti-Social Behaviour Team engage a private detective to pose as a tenant of Wirral Partnership Homes in order to form a relationship with a group of tenants suspected of committing acts of serious anti-social behaviour, including criminal damage to property, drug dealing and intimidation of other tenants. The purpose of establishing a relationship is to obtain information admissible in possession proceedings (e.g. by covert tape recordings of conversations) or to assist the police or the Anti-Social Behaviour Team to anticipate the future criminal behaviour of the tenants under suspicion. No potential witnesses are willing to co-operate with the Anti-Social Behaviour Team by installing cameras in the properties. Authorisation would be required in such circumstances since the private detective will be establishing a personal relationship with the subjects to obtain and disclose information to the Anti-Social Behaviour Team in a manner that is calculated to ensure that the subjects are unaware of the purpose of the personal relationship. This example also illustrates the difficulties, dangers (and expense) of using a CHIS in the circumstances where evidence cannot be obtained by other methods.
- 4.5.2 A trading standards officer enters a shop and makes a "test purchase" from a retailer suspected of selling "counterfeit goods". No authorisation would be required for a CHIS because he would not be establishing a personal relationship with the retailer (although if he had attached to his person a concealed camera it would be necessary for him to obtain authorisation for directed surveillance). If on the other hand, the trading standards officer struck up a conversation with the retailer whilst posing as a member of the public in order to ascertain whether the retailer (without any encouragement from the Trading Standards Officer) would offer to sell him (or another customer) counterfeit goods, then he would be acting as a CHIS and authorisation would be required. The essence of a CHIS is that he obtained information by winning someone's confidence on a false basis

#### 4.6 Code of Practice

The Code of Practice relating to the use of CHISs can be found at: <http://security.homeoffice.gov.uk/ripa/publication-search/general-publications/ripa-cop/index.html>

#### 5.0 COMMUNICATIONS DATA

- 5.1 Requests for communications data will be dealt with by **designated persons**. Those persons who are authorising officers for the purposes of directed surveillance and CHISs shall also be designated persons for the purposes of

obtaining communications data. Each local authority must have its own **Single Point of Contact (SPOC)**, to whom applicants can submit their requests for communications data. This is to ensure there is a specific point of accountability in each authority requesting data for reasons connected with RIPA and the HRA etc. The SPOC for Wirral Council is the Trading Standards Manager

- 5.2 It is important to note that we are not referring here to the interception of communications or the **content** of communications. The Council does not have power to intercept communications or acquire content.
- 5.3 There are 3 types of communications data;
- traffic data;
  - service use data; and
  - subscriber data.
- 5.4 More information on what constitutes these types of communication data is set out in the Home Office Code of Practice (see paragraph 5.9 below). Advice can also be sought from the Head of Legal and Member Services. Local authorities are only able to seek disclosure under RIPA of service use data and subscriber data **not** of traffic data.
- 5.5 Applications may be made for service use data e.g. itemised bills or subscriber data e.g. whether a person uses a particular network, who is the user of a particular number. A request for such information can only be made where it is necessary for the purpose of preventing or detecting crime or preventing disorder. The request must be proportionate. The form for completion for disclosure of communications data including guidance on completion is attached as **FORM RIPACD 1**. An authorisation or notice remains valid for **one month**. A valid authorisation or notice may be renewed for a further period of one month.
- 5.6 An authorisation or notice must be cancelled as soon as it is no longer necessary for the service provider to comply with the notice or the conduct required by the notice is no longer proportionate to what was sought to be achieved.
- 5.7 The **Senior Responsible Officer** must be responsible for:
- the integrity of the process in place within the public authority to acquire communications data;
  - compliance with Chapter II of Part I of the Act and with this code;
  - oversight of the reporting of errors to the Interception of Communications Commissioners Office (IOCCO) and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;

- engagement with the IOCCO inspectors when they conduct their inspections; and
- where necessary, overseeing the implementation of post-inspection action plans approved by the Commissioner.

In Wirral the Senior Responsible Officer is the Head of Legal and Member Services.

5.8 In Wirral there has been very limited use of these powers. In the year 01/01/08 – 31/12/08 there were only 2 requests made for subscriber data by the Council.

5.9 The Home Office Code of Practice on the use of Communications Data can be viewed at: <http://security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/acquisition-disclosure-cop.pdf>

## 6.0 REPORTING AND REVIEW

6.1 The Council recognises the public interest in the use by it of these powers. It is essential that it regularly monitors and reviews the use of these powers. Therefore, this policy and procedure shall be subject to a review on at least an annual basis. The Head of Legal and Member Services shall report annually to the Chief Officers Management Team on the use of these powers and the Director of Law, HR and Asset Management shall report annually to the Cabinet and quarterly to the Audit and Risk Management Committee in accordance with the Codes of Practice.

## 7.0 COORDINATION AND TRAINING

7.1 All Departments that use or may use the Council's powers under RIPA shall nominate a Departmental Coordinator under this Policy. The Departmental Coordinators shall meet at least once a quarter to review the operation of this policy, share best practice and consider training needs. Those meetings shall be chaired by the Head of Legal and Member Services or his/her nominated representative. Appendix 1 shows the list of Departmental coordinators.

7.2 The Council shall ensure that adequate training is provided to officers in the use of the powers. A training register shall be maintained and all authorising/designated officers will receive training at least every 2 years. A copy of the register is attached as Appendix 2. If an authorising/designated officer has not attended any training for a period of 2 years they shall **automatically cease** to be a responsible/authorised officer.