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## AUDIT AND RISK MANAGEMENT COMMITTEE

Tuesday, 3 November 2009

<u>Present:</u>	Councillor	P Southwood (Chair)	
	Councillors	RL Abbey L Fraser	J Crabtree
<u>Deputies:</u>	Councillors	S Mountney (In place of C Povall) S Niblock (In place of P Reisdorf)	
<u>Cabinet Member:</u>	Councillor	S Holbrook	
<u>In attendance:</u>	Councillors	A Bridson C Tegg	

### 40 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.

No such declarations were made.

### 41 MINUTES

The Director of Law, HR and Asset Management presented the minutes of the special meeting of the Committee held on 23 September 2009.

The Chair referred to a number of e-mails which had been sent to her from members of the public in relation to a wide range of issues and comments that they believed should have been recorded in the minutes. The Chair proposed that the minutes be amended to include the following matters –

- An allegation raised by Mr Morton of hardship suffered by a tenant with learning disabilities who had to seek assistance from the Welfare Fund to purchase clothing, due to the financial impact of the 'special charging policy' at Bermuda Road, Curlew Way and Edgehill Road in Moreton.
- Concern expressed by Members in relation to the report to the Social Services Committee on 3 September 1997, 'Report on Future Services for People with Learning Disabilities', coming to light so late in the audit investigation process.
- A quote by Mr Morton from a February 2004 e-mail, which he alleged clearly showed that two senior managers in Adult Social Services were aware that the 'special charging policy' was unfair and that the domiciliary care charging policy should have applied since 1997.
- An allegation by Mr Morton that he had been the victim of bullying, whilst employed by the Council.

**Resolved – That the minutes of the special meeting held on 23 September 2009 be amended to include those matters now referred to and that they be re-submitted to the next meeting of the Committee for approval.**

42 **ADULT SOCIAL SERVICES - CHARGING POLICY - SERVICE USERS RESIDING AT "IN HOUSE" SUPPORTED LIVING UNITS DURING THE PERIOD 1997 TO 2003**

Further to minute 23 (23 September 2009), the Chief Internal Auditor presented a report which addressed the Special Charging Policy applied to service users residing at "in house" Supported Living Units. The Committee considered the report in conjunction with the report elsewhere on the agenda of the Director of Adult Social Services 'Charging Arrangements for Supported Living in Wirral 1997 to 2003' (see minute 43 post).

Information had been reviewed from a number of sources including the Audit Commission's PIDA Report, Mr Morton's grievance, and documents within the Department of Adult Social Services. The Audit Commission was made aware of the documents reviewed by Internal Audit and was not aware of any additional documents relevant to the investigation. In response to a question from a Member, the Director of Law, HR and Asset Management confirmed that he had contacted Mr Morton's solicitor, to seek the views of Mr Morton and to request his assistance in relation the audit investigation. The Director had also requested the co-operation of Mr Morton in relation to his investigation of Mr Morton's allegation of bullying (Cabinet minute 137 (24 September 2009) refers). However, to date, no response had been received from Mr Morton, or his solicitor, in relation to either matter. A Member expressed the view that the report of the Chief Internal Auditor was incomplete without the views of Mr Morton being included within it and that its consideration should be deferred to allow time for consultation with Mr Morton to be undertaken.

In order to assess if the Special Charging Policy was "unreasonable", enquiries were made to the Directors of all northern Adult Social Services with a copy to the Chief Internal Auditors of the same Authorities concerning the charges levied by them between 1997 and 2003 for "in house" supported living service users. The format and content of the Questionnaire and letter had been agreed with the Director of Adult Social Services and the Audit Commission. Over 50 authorities were consulted from the North West, the Midlands and Yorkshire; all were given reminders, but only 11 replies had been received, all from North West Authorities. Analysis of the survey of other local authority's charges was difficult to use to make comparisons as there were only 11 survey responses. Some authorities charged on an hourly rate or a sliding scale whereas Wirral charges were based on income. Depending on the hours of care provided, some charges were comparable with Wirral's and the maximum charge of one approximated to Wirral's average for the period 1997/1998 to 2002/2003, which was £78. The approximate average for the other authorities was £45 and some of those who made comments on Wirral's charging policy were critical of the level and considered it high.

Relevant documents from the Department of Adult Social Services (DASS), e-mails and committee reports had been reviewed to ascertain if there was evidence that officers had information that could have indicated the charges were unreasonable. Further discussions and enquiries were made with DASS officers and managers and all were again open, cooperative and helpful but, inevitably, there were difficulties in remembering details and locating documents related to several years ago at a time when the Department was in "Special Measures".

The Chief Internal Auditor set out the chronology of events that led to a special charging policy being implemented for service users at Supported Living Units at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2003. This was in accordance with a decision of the Social Services Committee held on 3 September 1997 (minute 31 refers). A subsequent report entitled "Charging Policy Review" presented to a special meeting of the Social Services Committee on 26 July 2000 to inform Members of the outcome of the consultation exercise on proposed changes to the charging policy for non-residential services stated that service users who resided in Supported Living Accommodation were not included under the proposed Policy. The report went on to make clear that a further report would be submitted to the Adult Community Care Panel and Social Services Committee outlining charging arrangements for that client group. However, no evidence had been discovered that a further report was produced and submitted. It was clear from an e-mail and other correspondence that officers were aware that a further committee report was needed. It was also clear that Mr Morton had brought the issues to the attention of officers within the Department in 2001.

He commented upon an analysis of the charges levied on all the service users who lived at Bermuda Road, Curlew Way and Edgehill Road from 1997 to 2003. The charges depended upon the service users' benefits, in accordance with the policy approved by Social Services Committee on 3 September 1997. The records reviewed indicated that the average financial assessment charge for the period was £77.70 – the range being from an average of £63.33 in 1997/1998 to an average of £83.82 in 2002/2003. This left an average amount over the period for the service users own use of £97.42; ranging from £89.02 in 1997/1998 to £107.77 in 2002/2003. This contradicted the suggestions that all the income of supported living service users was taken as a contribution to the costs of care. It also contradicted the suggestion that charges were in excess of £100 per week. Records indicated that the average ratio of charge to service user's income over the 5 years was approximately 44 per cent.

The Chief Internal Auditor commented further that a review of service users resident in the premises in Balls Road, Birkenhead was also conducted and that no documents or records of any sort could be found that indicated that any residents were charged for care services – the only charges being in respect of rent. Anomalies were the subject of an ongoing investigation by the Director of Adult Social Services (see minute 43 post) which would be reported to Members upon conclusion.

As to whether the charges applied by the Council were unreasonable and therefore, unlawful, the Chief Internal Auditor referred to the Audit Commission Report "Charging with Care" of May 2000. That report (in Section 45, page 25) commented on the definition of 'reasonableness', which was crucial to determining legality of charging. The report stated that "provided that decisions over the principles related to charging are properly debated and resolved then the resultant approach can be considered to be 'reasonable'". The special charging policy applied to residents of Bermuda Road, Curlew Way and Edgehill Road from 1997 onwards was in line with the decision of the Social Services Committee on 3 September 1997. Consequently it was, therefore, reasonable and lawful at that time and, until the time when Fairer Charging should have been implemented, in April 2003, it might have remained reasonable and lawful.

Analysis of the documentary evidence indicated that in October 2000, some officers were aware the charges were not in accordance with best practice, by virtue of not having been reported to Members in accordance with a previously reported intention. Furthermore, on 6 April 2001, they were in receipt of an evidenced recommendation from the Supported Living Development Officer (Mr Morton) that the charges should cease.

Had the Policy for Supported Living been reviewed in accordance with paragraph 4.24 of the Special Social Services Committee report of 26 July 2000, Members might have implemented the wider departmental charging policy to "in house" Supported Living, albeit this could not be known for certain. However, if it had been so decided, then Members today might wish to extend reimbursement back to 4 December 2000 (when the other charges approved by the Special Social Services Committee on 26 July 2000 came into effect). If so, the reimbursement for the 16 service users who were affected during the period 4 December 2000 to 31 March 2003 had been calculated to total £127,700. The Chief Internal Auditor commented that any reimbursement of excess charge would require Cabinet approval. If the funding could not be met from within existing resources, it would also require Council approval and he recommended that the cost of any reimbursement or other action be funded from the Department of Adult Social Service's Revenue Budget.

A Member indicated that Mr Morton believed that the internal audit investigation had failed to consider a report to the Social Services Committee in 1999 and he requested clarification with regard to whether a file related to the special charging policy had been considered as part of the investigation. With regard to the Special Meeting of the Social Services Committee in 1999, the Director of Law, HR and Asset Management confirmed that it had been referred to in the report to the special meeting of the Committee held on 23 September 2009 – as such, it formed part of the evidence base. The Director believed that all items relevant to the charging policy had been included in the review and confirmed that Mr Morton had been invited on a number of occasions to provide any evidence in his possession. However, if there was any further evidence it should now be produced.

Councillor Mountney then requested that the Committee adjourn.

**The Committee stood adjourned for 20 minutes.**

With the agreement of Councillor Mountney, the Director of Law, HR and Asset Management advised the Committee that during the adjournment, Councillor Mountney had spoken with officers and been reassured in relation to a number of detailed questions, particularly with regard to what evidence had been provided to internal audit and by whom. Councillor Mountney commented that he had also spoken with Mr Morton, who had confirmed that he was prepared to make a final statement through his solicitor to a future meeting of the Committee. He expressed the view that consideration of the internal audit report and the report of the Director of Adult Social Services on Charging Arrangements for Supported Living in Wirral 1997 - 2003 should be deferred to a future meeting, to be considered in conjunction with the statement to be provided by Mr Morton.

On a motion by Councillor Abbey and seconded by Councillor Fraser, it was –

**Resolved –**

- (1) That consideration of this matter be deferred and an update be presented to the scheduled meeting of the Committee on 25 November 2009.**
- (2) That, if a response from Mr Morton is not received in time for it to be included in the update report, a further special meeting be arranged to take place no later than the end of the 2009 calendar year.**

**43 CHARGING ARRANGEMENTS FOR SUPPORTED LIVING IN WIRRAL 1997 TO 2003**

The Director of Adult Social Services provided to the Committee his professional comments and views on the policies and practices with regard to Supported Living which were in place in Wirral during the period 1997 – 2003. His report was intended to complement both that of the Chief Internal Auditor ‘Adult Social Services – Charging Policy – Service Users Residing at “In-House” Supported Living Units During the Period 1997 to 2003’ (see minute 42 ante) and his report elsewhere on the agenda dealing with the wider matters raised in the PIDA (see minute 44 post).

He commented that in considering the 1997 Charging Policy, the context of the time needed to be understood. To enable people to stay in their own homes, the concept of ‘supported living’ was being developed and, as Charging for Residential Accommodation Guide (CRAG) could not apply, it being limited to residential placement, councils faced a conundrum of how and how much to charge. Without any clear national guidance a plethora of different charging arrangements arose throughout the country. In May 2000, the Audit Commission produced an extensive document ‘Charging with Care’ which considered the range of different charging arrangements and how ‘reasonableness’ should be interpreted. It led in turn, to the first comprehensive guidance covering all non residential charges – Fair Charging, issued in November 2001.

The Director indicated that the policy adopted in Wirral in 1997 would have been written to address the particular position of people moving from a residential home, Esher House, into their own tenancies. Although it was inflexible and did not take as full an account of all people’s needs as would have been desirable it was quite clear that it was not the intention of the Council at that time to disadvantage those individuals. Rather, the Council was seeking to make an improvement in their lives and enable them to have greater independence than would have been the case had they remained in residential accommodation. He expressed the view that he did not consider, again within the context of the time, that the policy could have been regarded as being so “unreasonable” as to question its legality.

Between 1999 and 2002, the Department had been put into Special Measures and clearly, matters of internal administration and governance lay at the heart of the problems which led to that designation. For whatever reason, the policy adopted by the Council in 1997 was not applied consistently to subsequent Supported Living places that were being established. It was possible to surmise that this may have arisen from confusion at the time of Special Measures; or it may have arisen from a perception that the needs of service users in other settings were very different and that the 1997 policy was inappropriate; or, quite likely, a combination of both. The former residents of Esher House had high levels of need which required 24 hours support and the cost of it would have exceeded the contributions provided. Other service users moving into other supported living settings would have had varying

levels of need and officers, at that time should have placed before members the anomalies that were arising and the need to provide for a more flexible and appropriate policy.

He reported that in the lead up to and following the issue of Fair Charging guidance in 2001, there were further missed opportunities to lay before members the position with regard to charging and to place it within the context of Fair Charging, which was due to become operative by no later than April 2003. A further complexity at the time would have been the development of the "Supporting People" programme which was launched on 1 April 2003, to provide housing related support to help vulnerable people to live more independently and maintain their tenancies. Although there were numerous reports about Fair Charging and working parties operating, these failed to provide sufficient clarity for members to make appropriate decisions. During the period 2000-2003, there was evidence that concerns about anomalies and a failure to collect income through not applying charges to some service users were raised within the department, but these did not lead to timely action.

The Director commented also that the report to the special meeting held on 23 September 2009 (minute 23 refers) contained reference to the position at Balls Road. There had been confusion about this and Internal Audit had made clear that the 'special charging policy' was not applied here. However, investigations into the charges that had been made for rent and service charges had shown apparent anomalies that needed to be resolved. The detail was complex and the Director proposed to write to members once he was satisfied that the history of the matter had been satisfactorily unravelled. He confirmed that if any action was required he would report appropriately to the Cabinet.

**Resolved – That consideration of this matter be deferred until such time as an updated internal audit report is presented to the Committee, to take into consideration the views of Mr Morton in relation to the audit investigation.**

#### 44 **PROGRESS REPORT ON ACTION PLAN IN RELATION TO PUBLIC INTEREST DISCLOSURE ACT 1998 (PIDA)**

The Director of Adult Social Services provided an update on the actions undertaken by the Department of Adult Social Services (DASS) in response to the Public Interest Disclosure Act 1998 (PIDA) report produced by the Audit Commission. He set out the five broad actions required by the PIDA report and commented that progress had been made through a series of sub actions, most of which had been completed as outlined in an action plan appended to his report. In addition to the Audit Commission Report, an Internal Audit Report dated 13 March 2008 identified seven broad actions in relation to the PIDA, all of which had been completed by 28 November 2008. He reported also that a further three recommendations by Internal Audit were endorsed by the Committee on 4 November 2008 (minute 37 refers) and he set out the departmental response to each.

The Director indicated that his report referred to actions that had been completed by January 2009, at which point his report was delayed whilst the investigation into audit and disciplinary matters was undertaken. Actions completed since January 2009 included a financial Review of all people supported by independent sector providers and a value for money appraisal of existing domiciliary care arrangements.

Although most of the actions set to respond to issues highlighted by the PIDA had been completed, the Director provided an explanation in relation to the following, which were listed in the appendix to his report as “ongoing” –

- Review all LD People who Use Services (AC R4)
- Review current Domiciliary Care contract in terms of the personalisation agenda and context of individual budgets (ACR2)

He reported also that the department currently had 257 people supported by 26 accredited supported living providers and, in Wirral there were a further 20 accredited providers with whom no people were currently placed by DASS. Since the monitoring process was launched in January 2009, the Contracts Monitoring Team had completed 10 spot check inspections and 9 full inspections, most of which had been carried out jointly with a seconded officer from the Supported Living Team. He indicated that following each inspection an action plan was agreed with the Provider and its implementation monitored, with follow up visits being arranged where appropriate.

However, contract monitoring and quality control was also a matter for future work in the context of broader developments in the transformation/ personalisation agenda. These included the role and place of Wirral’s Local Involvement Network (LINK), which had a statutory role to monitor the quality of provision across health and social care. In turn, as the new contracting approach was developed, expectations upon providers and some more comprehensive person centred arrangements would be developed and would be the subject of further reports.

The Director commented that each of the reports on the Committee agenda were due to be considered by the Health and Well Being Overview and Scrutiny Committee on 10 November 2009.

**Resolved –**

- (1) That the report be noted.**
  - (2) That this Committee expresses the view that the Health and Well Being Overview and Scrutiny Committee should defer consideration of the following reports until such time as a final update report has been resubmitted to the Audit and Risk Management Committee:**
    - **The report of the Chief Internal Auditor “Adult Social Services – Charging Policy – Service Users Residing at “In-House” Supported Living Units during the period 1997 – 2003”**
    - **The report of the Director of Adult Social Services “Charging Arrangements for Supported Living in Wirral 1997 to 2003”**
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