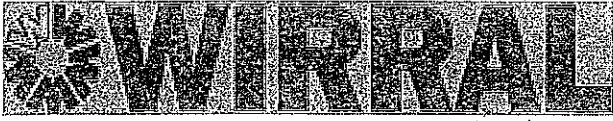


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Wirral Council

Report of an investigation into the treatment of Martin Morton in
relation to his allegations of abuse of power/bullying

Prepared by Martin Smith
Independent Associate Consultant
North West Employers

31 March 2011

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EXECUTIVE SUMMARY

1 INTRODUCTION

Background

- 1.1 This report presents the findings of an investigation into the treatment of Martin Morton, former Supported Living Development Officer, Department of Adult Social Services (DASS), in relation to his allegations of abuse of power/bullying.
- 1.2 I believe the investigation has been comprehensive and thorough and, as a result, the Main Report is extensive. Consequently, to assist with an immediate understanding of the matters involved in this case, this Executive Summary provides an overview of the main issues which have arisen and which now need the Council's consideration.
- 1.3 However, it should be borne in mind that, by its nature, this Executive Summary is only intended to present such an overview of my investigation and does not address the detailed investigation findings which are presented in full in the Main Report. Consequently, for a full understanding of my investigation findings, the reasons for them, and how they have been used to draw my conclusions and recommendations, it is important to refer to the Main Report which is set out in the following pages.

Terms of Reference

- 1.4 Within the agreed Terms of Reference the purpose of the investigation has been to seek to establish whether Martin Morton was subject to any bullying or other inappropriate behaviour by any officer or Elected Member, or by the Council as an organisation, and to present a report on my findings.
- 1.5 To meet these Terms of Reference I have been concerned to ensure that the ground rules and methodology I have adopted for my investigation, which are shown in section 4, mean that the outcome will provide, for both Martin Morton and the Council, a means by which to secure closure to Martin's

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grievance/whistleblowing allegations. This is, I believe, what I have been asked to do. Consequently, the findings, conclusions and recommendations in this report are my judgements of the facts based on their merits and are expressed here, specifically, in order to meet the brief I believe I have been given.

- 1.6 Consequently, this report has been prepared at the request of the Council and its Author claims qualified privilege in respect of its contents and appendices.

Outline chronology of events

- 1.7 In order to assist with an overall understanding of Martin Morton's case, I have included an Outline Chronology of Events at Appendix 1 of the Main Report. A summary is set out below:

- | | |
|---------------------------|--|
| 1990: | Martin Morton commenced his employment With Wirral Council. |
| 2000 | Appointed as Supported Living Development Officer. |
| 2001 – 2006: | Consistently raised concerns over service issues related to Supported Living. |
| July 2006: | ██████████ confirmed DASS has no statutory powers to intervene in such service issues. |
| 11 Aug 2006: | Commenced lengthy period of sickness absence. |
| 18 Sept 2006: | Submitted formal whistleblowing/grievance complaints to DASS. |
| 6 & 28 Nov & 18 Dec 2006: | Series of informal "problem solving" meeting held. No resolution of the formal grievance. |
| 5 Feb 2007: | Formal hearing of whistleblowing/grievance complaints. |
| 27 Feb 2007: | Martin Morton invoked the whistleblowing procedure re unreasonable delay in grievance process and as a means of addressing his concerns. |
| 2 March 2007: | Letter of appeal sent to Chief Executive listing both service and employment issues. |

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- 23 May 2007: Appeals Sub-committee hearing of grievance appeal adjourned to enable DASS to respond fully to Martin Morton's complaints.
- 2 July 2007: Appeals Sub-Committee's reconvened hearing of Martin Morton's appeal.
- 3 July 2007: Appeal withdrawn after day 1 of the hearing.
- Sept 2007: [REDACTED], [REDACTED], on annual leave. Martin Morton complained of having no work to do.
- 2 Oct 2007: Email to [REDACTED] enquiring where whistleblowing investigations are up to.
- 16 Nov 2007: [REDACTED] confirmed an investigation had already been carried out by [REDACTED].
- 28 Nov 2007: "Problem Solving" meeting re further grievance about having no work to do.
- 11 Dec 2007: [REDACTED] declined request for mediation via ACAS and confirmed the matter is closed. His position is final.
- 23 Jan 2008: Martin Morton commenced period of sickness absence.
- 20 Feb 2008: (i) Formal grievance hearing about having no work to do.
(ii) Discussions about Martin Morton leaving with a settlement figure in accordance with a Compromise Agreement.
- 7 April 2008: Compromise Agreement signed and Martin Morton's employment terminated.

The Legal Position

- 1.8 Employers have a legal duty of care to all employees. Behaviour which can be construed as bullying, harassment and/or victimisation, and the failure to deal with such incidents or allegations, can expose the employer and individual employees to a number of legal consequences.

2 NATURE OF MARTIN MORTON'S ALLEGATIONS

Sources of allegations

- 2.1 The range and nature of Martin Morton's allegations, as they were presented initially to senior managers in DASS and then to the Appeals Sub Committee, are wide, complex and varied. The sources of these allegations are to be found principally in a series of documents which are listed at para. 2.1 of the Main Report.

Service and Employment Issues

- 2.2 These documents relate to the events which have led to Martin Morton's allegations and they cover both service and employment issues. Bearing in mind the terms of reference for this investigation, I have concentrated on those allegations which relate to employment issues i.e. particularly those concerning alleged abuse of power/bullying as they relate to the treatment of Martin Morton. These are grievance matters which should be addressed within the Council's appropriate policy and procedure which is discussed in section 3.

Two Perspectives

- 2.3 Consequently, with my terms of reference in mind, Martin Morton has alleged that there was a bullying culture in DASS which has led to some of the personal treatment he has received. He has also claimed that he was bullied because he was a whistleblower: that some managers have abused their positions of power which has resulted in him receiving detrimental treatment by the Council as a whole.
- 2.4 As a result, there are two perspectives to those matters I have investigated i.e. (i) allegations based on individual/personal behaviour by officers and Elected Members and (ii) allegations based on the formal actions of the Council as an organisation. For a clear understanding of these allegations, within these two perspectives, I have grouped them according to the type of allegation being made and they broadly comprise the following:

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1. Bullying

- 2.5 Bullying can be defined in many ways but is generally behaviour that is identified as a misuse of power. It can be manifested in a single incident, but is usually persistent and is behaviour which is offensive, abusive, intimidating, malicious or insulting. It can also be the unfair use of sanctions which makes the recipient feel upset, threatened, humiliated or vulnerable. Bullying undermines self confidence.
- 2.6 Bullying is not dependent on an intention to cause distress but is assessed by the impact the behaviour has on the recipient. Consequently, it is possible that behaviour which is acceptable to some employees may cause embarrassment or distress to others. Bullying relates, therefore, to the perceptions and feelings of the recipient. As a result, bullying behaviour is mainly identified not so much by what has actually been done, but rather by the effect that it has on the recipient.
- 2.7 Types of bullying behaviour are shown below as sub headings:

1 (a) Personal Behaviour

- 2.8 Personal behaviour involves 1:1 contact between the person alleged to be bullying and the recipient and relates to personal actions which can be verbal, non-verbal and/or written.

1 (b) Collective behaviour

Collective behaviour involves two or more people, often departmental colleagues, who take part in joint or concerted action which adversely affects an individual.

2. Abuse of power

"I worked for Wirral Council between 1990 – 2007 and I maintain that during this time I experienced a dysfunctional and destructive power dynamic which manifested itself in a bullying culture characterised by fear and complicity.

Therefore I believe a major focus of the bullying investigation commissioned by the council will need to take account of this abuse of power..."

[See Martin Morton's paper entitled "Wirral Council, Whistleblowing and Abuse of Power" March 2010 page 1]

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- 2.9 This is Martin Morton's starting point for consideration of what is meant by the use of the term abuse of power. I have already defined what I mean by bullying and described both personal and collective examples of this type of behaviour. So far as abuse of power is concerned it is important to be clear that bullying is a form of abuse of power. However, for the purposes of investigating Martin Morton's allegations, I am using the term abuse of power to describe the improper or inappropriate use of authority by someone who has that authority because they hold a particular office.
- 2.10 As with bullying behaviour, an abuse of power is not necessarily dependent on an intention to cause distress but, similarly, is assessed by the impact it has on the recipient. Consequently, an abuse of power i.e. an improper or inappropriate use of authority, can occur by design or by default. It can be based on someone's intention i.e. it is a wilful act which reflects on that person's personal conduct, or it can be unintentional i.e. it is inadvertent and reflects on that person's capability or competence.

Power Dynamic

- 2.11 Martin Morton has referred to a "...*dysfunctional and destructive power dynamic which manifested itself in a bullying culture...*" In my discussions with him it has been vitally important for the quality and integrity of my investigation for me to understand his perception of the use of such a term. It is apparent to me that Martin Morton is making reference to people who are decision-makers in the organisation and who have the position and influence to affect the working practices of their colleagues i.e. their daily operations and decisions. I have borne this perception in mind when considering the facts of the matters investigated.
- 2.12 In the context I have mentioned, two types of abuse of power are shown below as sub-headings:

2(a) Denial of due process at Department level

This refers to DASS' consideration/discussion and correspondence with Martin Morton regarding his formal grievance/whistleblowing claims.

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2(b) Denial of due process at Corporate level

This refers to corporate consideration/discussion and correspondence with Martin Morton regarding his formal grievance/whistleblowing claims e.g. the alleged conduct of the Appeals Sub-Committee's meetings to consider his grievance appeals.

2.13 I have included an Overview of Martin Morton's allegations by Types of Behaviour at Appendix 2 of the Main Report.

2.14 Martin Morton has also made other claims which, in view of their nature, I felt required some examination.
A summary of these claims is shown below:-

Nepotism

"When I worked for DASS this widespread perception (e.g. nepotism) was reflected in persistent references to "the Halton Mafia" and "The Junta"

I assume the former term is, no doubt, a reference to the high proportion of appointees from Halton Council that followed in the wake of [REDACTED] appointment to Wirral DASS..."

"I can also recall... a female member of the DASS Finance Section who was sent a letter of apology from [REDACTED] after claims of nepotism in relation to recruitment practices were found to be proven" [See Martin Morton's paper entitled "Wirral Council, Whistleblowing and the abuse of power" March 2010 page 17]

Pay-off to a Whistleblower

"The tendency to lower the profile of AP (Adult Protection) concerns in relation to XXX (a service provider) was consistent. The most striking example of this complicity was the "paying-off" of supporting people team officer [REDACTED] who, having whistleblown to [REDACTED] about (a service provider) was, I understand, paid 6 month's pay for 3 weeks work in June 2005. [See Martin Morton's written submission to Appeals Sub-Committee 23 May 2007, page 19]

2.15 These are references to potentially very serious matters and in view of their possible significance to Martin Morton's case, I felt that it was important to examine them closely. I have, therefore, included both of these claims in section 5: Investigation Findings in the Main Report.

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3 POLICIES AND PROCEDURES

3.1 The Council has established policies, procedures and practices in place to address any complaints which may be made by its employees. These are:-

- (i) Stop Harassment, Bullying and Victimisation in the Workplace Policy (HBV policy);
- (ii) Grievance Procedure; and
- (iii) Confidential Reporting (Whistleblowing) Policy;

Given the nature of Martin Morton's allegations which lie within my terms of reference and, for the sake of clarity, bearing in mind the weight of the allegations towards bullying and abuse of power, it is clear to me that any investigation of these complaints should be carried out in accordance with the Council's policy to Stop Harassment, Bullying and Victimisation in the workplace. Consequently, I have conducted this investigation in accordance with the principles and procedures of this policy.

3.2 However, it is important to remember that Martin Morton's allegations, as presented to DASS and then to the Appeals Sub-Committee, were contained in those core documents referred to in para 2.1. Consequently, while the employment issues were appropriate to be dealt with via either the Grievance procedure or Harassment, Bullying and Victimisation (HBV) policy, the service issues were more appropriate to be dealt with via the Confidential Reporting (Whistleblowing) policy. During the course of this investigation I have been struck by the fact that all of Martin Morton's allegations were dealt with according to the Council's Grievance procedure. This is an important point which is discussed fully in the Main Report.

4 INVESTIGATION PROCESS

4.1 From the outset of this investigation process I have endeavoured to ensure that my investigation is comprehensive, thorough and as complete as possible and I have, therefore, seen a large number of people as witnesses in order to achieve this. In this particular case I have found that the size of the task has been unusually large.

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Ground rules

- 4.2 In accordance with the HBV policy I have conducted my investigation according to a set of good practice ground rules.

Methodology

- 4.3 I have also adopted the following methodology throughout the investigation process i.e.:

- Ascertain the facts of Martin Morton's allegations by reference to the core documents available to me and by interviewing all appropriate people;
- Prepare a draft note of each of my interviews and agree it with each interviewee as an accurate record of our discussion;
- Establish my findings based on these agreed statements;
- Draw my conclusions based on those findings;
- Make my recommendations based on those conclusions;
- Prepare my investigation report setting out the outcome of my investigation; and
- Send a copy of my completed Investigation Report to Bill Norman, Director of Law, HR and Asset Management, for consideration.

5 INVESTIGATION FINDINGS

- 5.1 The range of Martin Morton's allegations is wide and full details are contained in the documents listed at para. 2.1 of the Main Report.
- 5.2 Based on the information available to me through the investigation I have conducted and, for reasons of clarity, my findings are grouped according to the overview of Martin Morton's allegations previously mentioned. All of these allegations, which include fifty separate instances or examples of Martin Morton's allegations of when and how he has been treated detrimentally, are discussed fully in section 5: Investigation Findings in the Main Report.

6 OVERALL CONCLUSIONS

6.1 Martin Morton stated to the Audit and Risk Management Committee on 25 November 2009 that he suffered "*enduring, sustained and co-ordinated abuse of power on the part of senior officers of Wirral Council.*" He has also maintained that the basic premise of his grievance is that he was treated in a detrimental way because he would not desist from trying to address concerns in relation to Supported Living schemes. He has stated that his grievance is about the way he was treated detrimentally for trying to do his job while the whistleblowing aspect of his submission detailed the specific concerns he had persistently raised.

6.2 There are fifty separate instances or examples of Martin Morton's allegations of when and how he has been treated detrimentally.

6.3 I have examined each of these and, therefore, necessarily my investigation has been comprehensive and, I believe, thorough. I have been concerned to ensure that I have kept an open mind and made my judgements of the facts on their merits and that I have been fair and equitable to everyone who has taken part.

6.4 Overall, I have concluded that of the fifty instances or examples of Martin Morton's allegations there are (i) a number where I have found them to be substantiated, (ii) a number where I believe they are not substantiated, and (iii) two where there is insufficient information on which to draw a conclusion. All of these outcomes are discussed in the Main Report.

6.5 At the same time, while conducting this investigation there have been several key themes which have emerged and which I have taken into account in my consideration of Martin Morton's case i.e. Departmental culture, working relationships, communications, Martin Morton's role, the role of HR and the issue of hindsight, These are discussed briefly next.

Departmental culture

6.6 The starting point for a change in the Departmental culture in DASS during Martin Morton's employment period was the appointment of [REDACTED] as [REDACTED] in 1998. The Department was going into special measures and was one of the ten worst in the country. [REDACTED] felt that some staff were good at their jobs while others needed clear leadership

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which he had provided. As the new [REDACTED], [REDACTED] believed it was important to adopt a strong hierarchical approach in order to deliver services and to manage people to meet good standards and good practice. Consequently, [REDACTED] was a "stickler" for protocol and he took a very determined line concerning managers' behaviour and how they spoke to each other. He felt it was important to avoid being sloppy about such matters.

- 6.7 This approach was coupled with a degree of formality to staff communications and, in Martin Morton's case, this formality was reflected in the use of e-mail and memoranda with the accompanying perception of the management style as being non-person centred i.e. brusque, off-hand and dismissive of others.
- 6.8 Some staff would feel comfortable within such a Departmental culture while others would not. Martin Morton was, I believe, clearly one of those who did not feel comfortable in this setting.

Working relationships

- 6.9 It is perhaps a statement of the obvious but there was a long period of decline in the working relationship between Martin Morton and his senior managers in DASS. This decline was borne out of the Departmental culture and also differences in style and personality which led to a lack of sympathy for and/or understanding of each other's respective point of view. This led in turn to increasing mistrust between the parties and to suspicions creeping in about the motives behind each others' actions. In due course, this decline led to a complete breakdown of trust and confidence between Martin Morton and his DASS' senior managers, representing his employer, and inevitably, it culminated in Martin's departure from the Council in April 2008.
- 6.10 Martin Morton is passionate about service user's rights and he accepts that his views on professional issues and events can be at one end of the continuum: managers can find this both challenging and demanding. Consequently, successful working relationships with Martin Morton require managers to be particularly skilful and well organised in order to retain their focus on the task. It seems in DASS' case that these skills were either not present or were not applied appropriately to working relationships with Martin Morton. Consequently, the working situation deteriorated over time and both parties became increasingly frustrated and "switched off" from each other. In such circumstances, it is possible to see how such

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increasing frustration can lead to changes in attitude and behaviour, which can then cause officers to lose sight of good practice in terms of how they conduct their working relationships.

6.11 It is also clear that working relationships suffered a further deterioration in May 2007 on Martin Morton's return to work when [REDACTED] became his line manager. From the evidence I have gathered, I believe [REDACTED] management style was never strong enough to meet the demands of the situation both he and Martin Morton found themselves in. Consequently, the inevitable happened and things got much worse.

6.12 A significant contribution to this deteriorating situation was made by [REDACTED], following Martin Morton's grievance appeal in July 2007, when [REDACTED] decided to distance herself from Martin Morton i.e. to have as little contact with him as possible. This lack of communication was compounded over the question of providing HR support for Martin Morton during the period of his grievance submission: [REDACTED] thought [REDACTED] had offered this, while [REDACTED] did not know it was available. As a consequence Martin Morton received no such support.

Communications

6.13 Communications between Martin Morton and his senior managers has been a recurring theme of the investigation. Communications are, of course, a key feature of the working relationship. In this particular case, communications are noted more by the breakdown which occurred. It seems clear that there was very little dialogue between the parties: it was more the case that there were two monologues conducted at a distance usually through the formal medium of email and memorandum.

Martin Morton's role

6.14 Also, it has been said that Martin Morton was good at his job: he was a good manager, who was very person-centred, and he put service issues before everything else, including himself. Clearly, he was not an average colleague and managing a successful working relationship with him was perceived to be a difficult thing to do.

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- 6.15 It is also clear that with the change in Departmental culture, Martin Morton began to find it difficult to fit in with the new style. He began raising his service concerns in 2001 and over time working relationships with his senior managers went into terminal decline. As this deterioration in relationships progressed Martin Morton became more determined to see things through to a culmination and became a "*thorn in DASS' side*" over his grievance complaints.

Role of Human Resources

- 6.16 I have found that the role of the HR function in Martin Morton's case has been minimal. While in theory the HR function has resources available to provide support to the grievance process and the participants in each case, there was no attempt to provide such support to Martin Morton at any stage.

- 6.17 I believe the HR function has two key roles in matters of grievance issues. Both involve taking the initiative when necessary in order to make things happen. First, HR should seek to ensure that the parties find a resolution i.e. a means to secure closure, which not only meets the needs of the complainant, but also the needs of the authority in (i) discharging its obligations to the employee; and (ii) protecting the Council's interests and reputation as a good employer. It seems to me that in this particular case the officers involved should have asked themselves, what it was going to take to sort out this grievance: and then worked backwards from there. There was no effective dialogue to this end either departmentally or corporately.

- 6.18 Second, HR should provide welfare support, as may be necessary, to the employee to ensure that their participation in the grievance process is effective and, by doing so, ensure there is a commitment from the employee to the outcome of their grievance. It is clear that neither of these things happened and I believe there are lessons to be learned here.

Issue of hindsight

- 6.19 There is a long history to the chronology of this case and, with the benefit of hindsight, it is possible to see the denouement of events and to understand what happened and why. It is also pragmatic, as appropriate, to make allowances for the way in which these events developed at the time. I have followed this approach in making my own judgements of what has happened.

Allegation Findings

- 6.20 In reaching my overall conclusions on my findings in respect of each allegation, I have set out my comments according to the same groupings of types of behaviour already used. They are shown below:

1. Bullying - Personal Behaviour

- 6.21 I have been mindful that Martin Morton's complaints are about individual senior officers of the Council in their personal working relationships and behaviour towards him. Such allegations are potentially very serious personal matters. It is also important to be aware that, although some of the incidents examined under this category of personal behaviour occurred over 6 years ago in 2004 and others in 2006, this is the first time that they have been independently investigated in this way.

Allegations 1 (A) – 1 (I)

- 6.22 Overall, I have concluded that there are three examples of personal behaviour which was inappropriate and which resulted in Martin Morton being bullied. These are:

Allegation 1 (A) – At a management meeting on 4 March 2004 when [REDACTED] said "Martin, what do you actually do?";

Allegation 1 (D) – At a management meeting on 4 November 2004 when [REDACTED] commented that Martin Morton was "just a dogsbody";

Allegation 1 (E) – I have concluded that while [REDACTED] request to Martin Morton to "put his moral considerations to one side" may not be bullying behaviour, DASS' failure to consider the formal channel of the whistleblowing policy for Martin Morton's service complaints was inappropriate behaviour which contributed to a denial of due process in Martin Morton's case.

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2. Bullying – Collective Behaviour

- 6.23 In considering this category of collective behaviour, I have been struck by the apparent co-ordination of DASS' response to Martin Morton's claims. When I spoke to [REDACTED] about the allocation of work to Martin Morton he said he had discussed this with his service colleagues, particularly [REDACTED], with whom he had agreed a way forward. He reiterated this point when he said that if he did not manage Martin Morton as Martin had wanted, it was not because [REDACTED] management style was lacking, but because *"it was now the DASS' view of the situation"*.
- 6.24 I have also been struck by the decision in May 2007 to deny Martin Morton access to service files relating to a service provider. Martin Morton made the reason for his request clear: it was related to his grievance appeal hearing on 23 May 2007. However, the question arises as to how Martin Morton could be expected to "fight his corner" in the appeal if he had to prepare his case based only on memory?
- 6.25 It seems to me that this brings consideration of this issue back to the basic tenet of Martin Morton's case i.e. if Martin's service based complaints had been separated from his employment complaints and dealt with according to the appropriate procedure i.e. the whistleblowing procedure, then the question of his request for access to service files in support of his grievance would not have arisen.

Allegations 2(A) – 2(P)

- 6.26 With these points in mind, overall, I have concluded that there are seven examples of collective behaviour which was inappropriate and which resulted in Martin Morton receiving detrimental treatment. These are:

Allegation 2 (B) DASS discussions with Martin Morton in May/June 2007 when he was given an instruction not to attend Adult Protection Strategy meetings resulted in his continuing professional exclusion and isolation;

Allegation 2 (D) Changes to Martin Morton's work allocation and the way those changes were introduced, which had a detrimental effect on him, resulting in his further isolation and exclusion from the Department;

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- Allegation 2 (G) By being denied access to supported living service files in May 2007;
- Allegation 2 (H) [REDACTED] inappropriate behaviour in the manner in which [REDACTED] handled the shredding of documents relating to Martin Morton which further damaged Martin Morton's trust and confidence in his senior managers;
- Allegation 2 (J) Following reported unfair criticism of Martin Morton by a service provider, [REDACTED] suggestion, that Martin Morton should contact his trade union, was a failure to give him support;
- Allegation 2 (L) The breakdown in communications between DASS and Martin Morton which contributed to a deterioration in working relationships and to a fundamental breach of trust and confidence between himself and his employer;
- Allegation 2 (P)(i) [REDACTED] reference to gross misconduct and the Council's disciplinary procedure, in his letter to Martin Morton of 16 November 2007, was threatening and is an example of inappropriate behaviour which undermined him;

3. Abuse of power – Denial of due process (Departmental)

- 6.27 In the conduct of this investigation it has become clear that, in my opinion, DASS' approach to Martin Morton's grievance has been poor. Other staff have mentioned the same issue in relation to their own grievances. I say this because the essence of successfully dealing with grievances is to find a resolution i.e. a means to secure closure, as speedily as possible.
- 6.28 In Martin Morton's case he submitted his formal grievance on 18 September 2006: he received no acknowledgement. It was not until after he had written to the Chief Executive that he received a request from [REDACTED], on 14 October 2006, to attend a discussion on 6 November 2006. Following a series of inconclusive informal "problem solving" meetings it was not until 5 February 2007 that a formal grievance hearing was held.

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6.29 There was a similar pattern established in November 2007 when Martin Morton submitted his second grievance about having no work to do. At the problem solving meeting on 28 November 2007 he was promised:

- (i) a job description;
- (ii) a discussion on working styles; and
- (iii) a follow up meeting within a month.

None of these things happened and, it seems, the only conclusion to be drawn from this is that DASS' senior managers had clearly demonstrated their lack of commitment to the grievance process.

6.30 The other significant concern which emerges from consideration of this category of Martin Morton's allegations is that involving his request to DASS for an investigation of his whistleblowing complaints. Martin Morton made this request clear to DASS in an email to [REDACTED] on 27 February 2007. Unfortunately DASS did not take up the point Martin Morton was making. There was no discussion of the need to separate the issues and no discussion of which of the Council's policies and procedures should be used to address them i.e. the whistleblowing procedure for service issues and the grievance procedure for employment issues.

6.31 This point about procedure is an important one because there are good reasons for having separate procedures to deal with separate concerns. To confuse the procedure to be used is to compromise consideration of the case. Service issues can never be resolved via the grievance procedure and, should anyone seek to do so via this route, it is likely that it will result in a denial of due process.

Allegations 3(A) – 3(D)

6.32 Consequently, overall I have concluded that there are three examples of inappropriate behaviour/abuse of power at the Departmental level which have resulted in a denial of due process by the Council, as an organisation, in its consideration of Martin Morton's grievance claims. These are:

Allegation 3 (A)	DASS' consideration of Martin Morton's formal grievance submitted on 18 September 2006, as evidenced by delays and a lack of a resolution;
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- Allegation 3 (B)(ii) DASS' lack of consideration of Martin Morton's request for a whistleblowing investigation which denied him due process in the consideration of his grievance;
- Allegation 3 (C) DASS' failure to deliver (i) a job description; (ii) a discussion of working styles; and (iii) an agreed follow-up meeting, as promised, in the consideration of Martin Morton's grievance about having no work to do, which has denied him due process in relation to his claims.

4. Abuse of Power – Denial of due process (Corporate)

6.33 In taking his complaints to the Appeals Sub-Committee, Martin Morton felt that he had taken his case as high as he possibly could. He said that he "gave up" explaining his case to [REDACTED] and wanted to say what he had to say to the Elected Members. Consequently, his expectations of the outcome of the appeal hearing were high. However, he came away from the hearing feeling he had not had a full and proper hearing of his case. The reasons for this are, I believe, to be found in the events of the day and these are examined in the Main Report under allegation 4 (B)

6.34 In my consideration of all of these matters I have found that there is one key issue which, I believe, undermines the Council's consideration of Martin Morton's grievance claim and which, to a significant extent, may explain the cause of his sense of dissatisfaction with the appeal process. It is that the grievance appeal hearing is not the appropriate forum for dealing with the majority of Martin Morton's concerns i.e. those involving service issues.

6.35 In his letter of appeal, dated 2 March 2007, Martin Morton made it clear that the matters pertaining to his grievance which were outstanding related to:

- Unethical/illegal practice including widespread and prolonged collusion with abuse;
- Gross maladministration;
- Financial mismanagement; and
- Bullying;

These are, of course, service related issues apart from that relating to bullying which is employment related. He also said

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that a resolution to his grievance lay in referring his concerns for scrutiny by an external body, preferably the Audit Commission. His extensive bundle of papers issued to the Appeals Panel expanded these points.

- 6.36 Added to this basic position is the clear evidence that there was no separation of these service issues from employment issues at the appeal hearing and there was a lack of advice provided to the Panel members about such important matters.
- 6.37 With this in mind it is also important to reflect on the obligations and responsibilities that there are on officers in key positions, at various levels of the organisation, to give appropriate advice to colleagues and Elected Members in the "build up" to such matters as a grievance appeal hearing. These obligations are:

Colleague

Key Officer

- | | |
|----------------------------|--|
| (i) Employee | Departmental HR officer; |
| (ii) Departmental Director | Departmental HR officer; |
| (iii) Chief Executive | Head of HR; |
| (iv) Appeals Sub-Committee | Joint responsibility: Head of HR/Group Solicitor |

The Departmental HR officer, Head of HR and Group Solicitor all have an important strategic contribution to make in ensuring that the Council meets the standards of good practice when dealing with grievance and/or whistleblowing cases.

- 6.38 If these obligations are met then the Council's arrangements to (i) discharge its obligations to the employee; and (ii) protect its interests and reputation as a good employer are safeguarded. However, for these arrangements to work successfully requires those officers in these key roles to make judgements of each case as it arises. It seems to me to be clear that, as at Departmental level, none of these obligations and responsibilities were properly met in the appeal hearing of Martin Morton's case.
- 6.39 It is also clear to me that this lack of separation of service and employment issues was repeated later in October/November 2007 when Martin Morton wrote to [REDACTED] to enquire about progress with his whistleblowing allegations. I believe that the appropriate decision would have been to separate the issues and commence the investigation of the service issues only and take no further action in respect of the employment issues. However this was not the decision taken: [REDACTED]

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██████████ decided to reject Martin Morton's request in its entirety and I believe this was a decision which repeated the error previously made and continued the denial of due process in this case.

Allegations 4(A) – 4(F)

- 6.40 Consequently, overall I have concluded that there are three examples, I believe, of inappropriate behaviour/abuse of power at the corporate level which have resulted in a denial of due process by the Council, as an organisation, in its consideration of Martin Morton's grievance claims. These are:

Allegation 4 (B) The lack of separation of service and grievance issues at the appeal hearing on 2 July 2007 which led to a denial of due process by the Council, as an organisation, in the consideration of Martin Morton's case;

Allegation 4 (D)(i) ██████████ refusal, in November 2007, of Martin Morton's request for a whistleblowing investigation of his concerns which denied Martin Morton due process in the consideration of his grievance and whistleblowing allegations.

Allegation 4(D)(iii) I have also reached a similar conclusion in relation to ██████████'s referral of Martin Morton to the Occupational Health Unit without consultation with him. This was inappropriate behaviour which undermined him.

Other claims

Allegations 5(A) – 5(B)

Nepotism

I have concluded that in the case of both alleged examples of nepotism by Officers, the allegations were examined at the time they were made and resolved by Elected Members and, consequently, there is no need to examine them further.

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Pay-off to a Whistleblower

I have concluded that the termination of the employment contract of the employee concerned did not involve the payment of any additional amount which could be regarded as a "pay off" payment.

Officer roles and responsibilities

- 6.41 Having considered the conclusions reached in respect of each of the allegations made by Martin Morton, I believe it is necessary to reflect on the role and responsibilities of the officers involved with those allegations where I have found there to be examples of inappropriate behaviour which has resulted in bullying and/or a denial of due process in the consideration of Martin Morton's grievance/whistleblowing complaints. I have made my comments accordingly. They are set out below.

Bullying - Personal/Collective behaviour

- 6.42 As my investigation findings have shown, in my opinion, there has been inappropriate personal behaviour in Martin Morton's case on the part of [REDACTED] under allegations 1(A) and 2(J)(i); [REDACTED] under allegation 1(D); [REDACTED] under allegation 2(H) and [REDACTED] under allegation 2(P)(i).
- 6.43 Also in my opinion, there has been inappropriate collective behaviour on the part of DASS under allegations 1(E); 2(B); 2(D); 2(G); 2(L). The point to note here is that while the action was taken by individuals, it was part of a coordinated approach taken on behalf of the Department which had the effect of undermining or otherwise adversely affecting Martin Morton.
- 6.44 There can be no allowances made or mitigation for bullying: it is inexcusable, unacceptable and should not be tolerated. It is also important to note that it is unacceptable to condone bullying behaviour under the guise of a particular management style.
- 6.45 At the same time, while bullying is not dependent on an intention to cause distress, but is assessed by the impact the behaviour has on the recipient, it is important to consider the issue of intent in order to make an assessment of the appropriate action to take. In other words, consideration of whether there has been an intention to bully or not points to the issues of the officer's conduct or capability and the possible course of the corrective action to take in each set of circumstances.

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- 6.46 It is also important to consider whether these instances are isolated incidents which have occurred as a product of the specific circumstances of Martin Morton's case, or whether they are part of a wider pattern of behaviour on the part of the individual officers concerned. Such information provides an important contextual background to this matter of personal accountability. However, the answer to this wider question is outside the scope of this investigation.
- 6.47 Also, the question of the passage of time since these events occurred needs to be considered. For the sake of clarity, I do not mean that the passage of time may remove or dilute the issue of personal accountability, but rather it may be a consideration in the judgement of the appropriate action to take. Similarly, with the passage of time, consideration also needs to be given as to whether the behaviour of the officer alleged to have bullied has changed over the period of time involved. A judgement of such a wider question can be made by examining whether there are or have been any other proven similar claims or allegations made against the individual officer concerned. Again such a judgement is outside the scope of this investigation.
- 6.48 Consequently, consideration of the appropriate action to take in the light of my investigation findings, under this category of behaviour, is particularly important. Where there has been no intention of bullying, then a remedy may lie in terms of the capability route i.e. in assessing the individual officer's training needs and devising an appropriate personal development programme. However, where there has been a deliberate intention to bully then the remedy lies in the Council taking appropriate disciplinary action against the employee concerned. In such an event the question of whether the Council can retain its trust and confidence in that officer is also a matter for consideration.

Abuse of power- Denial of due process (Dept'l/Corporate)

- 6.49 As mentioned above, the Departmental HR officer, Head of HR and Group Solicitor all have an important strategic contribution to make in ensuring that the Council meets the standards of good practice when dealing with grievance and/or whistleblowing cases. In Martin Morton's case, in my opinion, the judgement which was required concerned the recognition that this was no ordinary grievance case: indeed, for the most part it was not a grievance case at all. However, this strategic judgement was not made at any stage.

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6.50^What I believe is required in such matters is for a strategic "top-down" judgement to be made, at the outset, of the suitability of the case to proceed under whichever procedure is proposed. If this had been made correctly in this case there would have been a separation of Martin Morton's service and employment issues, followed by his grievance appeal hearing on employment issues (such as alleged bullying) and there could then also have been an internal investigation of Martin Morton's whistleblowing complaints carried out by Internal Audit in accordance with the Council's whistleblowing policy. In other words, the outcome which was achieved on service issues in 2009 could actually have been achieved in 2006/07 with the consequential benefits to the Council in terms of reduced time, cost and effort expended in the aftermath of Martin Morton's case, as well as damage limitation for the Council's reputation for competence.

6.51 However, one of the basic problems here is that there does not appear to be any satisfactory governance arrangements in place to prevent such a thing happening again i.e. the Council has no organisational memory or competence in place which means it does not need to rely on an individual officer's judgement on the day of an appeal.

6.52 In fact, I believe that in this case things went wrong at every stage of the process i.e.:

- (i) At Departmental level when there was no recognition of the need to separate the service and employment issues;
- (ii) At Corporate level (a) on 2/3/2007 when consideration was given to Martin Morton's letter of appeal; (b) on 23/5/2007 at the Appeal hearing which was adjourned to enable DASS to reply in full to Martin Morton's list of questions, the majority of which related to service issues; and (c) on 2/7/2007 when there was no separation of the service and employment issues.

6.53 There were several opportunities for the officers in these key roles to get their advice right but, I believe, on each occasion they got it wrong. Even at the late stage of November 2007 there was a further opportunity to retrieve the situation when [REDACTED] could have separated the issues and agreed to Martin Morton's request for a whistleblowing investigation of his service complaints. However, even this opportunity was missed. In all instances the effect was the same: Martin Morton received detrimental treatment.

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6.54 As with the previous category of personal/collective behaviour, consideration of the appropriate action to take in the light of these investigation findings concerning abuse of power- denial of due process is important. Where there has been no intention of denying Martin Morton due process then a remedy may lie in terms of the capability route i.e. in assessing the individual officer's training and development needs. However, where there is a judgement that there has been a deliberate intention to deny due process, then the remedy lies in the Council taking appropriate disciplinary action against the officer concerned. In such circumstances, again, it is also matter for consideration as to whether the Council can retain its trust and confidence in the officers involved.

6.55 I commenced my Overall Conclusions by stating that Martin Morton told the Audit and Risk Management Committee that he suffered "*enduring, sustained and co-ordinated abuse of power on the part of senior officers of Wirral Council*". While there are a significant number of Martin Morton's allegations where I have not found this to have been established, I believe my investigation has shown a number of other instances or examples where I have found that this claim has been substantiated. There are, in my opinion, several instances or examples of Martin Morton receiving detrimental treatment by the Council, as an organisation, in its consideration of his whistleblowing/grievance complaints. Consequently, in addition to the judgements which need to be made about the discharge of officers' roles and responsibilities in this matter, in the light of these findings, I believe it is also appropriate for the Council to consider its obligations to Martin Morton.

6.56 My recommendations are set out in section 7 of the Main Report.

6.57 The Main Report is now set out on the following pages.

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Report of an investigation into the treatment of Martin Morton in relation to his allegations of abuse of power/bullying

Prepared by Martin Smith Independent Associate Consultant
North West Employers

MAIN REPORT

1 INTRODUCTION

Background

- 1.1 This report presents the findings of an investigation into the treatment of Martin Morton, former Supported Living Development Officer, Department of Adult Social Services (DASS), in relation to his allegation of abuse of power/bullying.
- 1.2 At its meeting on 24 September 2009, following a discussion of the Department of Adult Social Services (DASS) charging policy in respect of in-house Supported Living Units, the Cabinet instructed [REDACTED], Director of Law, HR and Asset Management to commence an investigation into the treatment of Martin Morton in relation to his allegations. Consequently in order to comply with the Cabinet's instruction, [REDACTED] engaged myself to undertake this investigation on his behalf.
- 1.3 For the record, I was formerly the Director of Personnel and Performance at Salford City Council and, therefore, I am familiar with all aspects of HR Policy and Practice in local authorities. I am currently an Independent Associate Consultant with North West Employers and it is within this capacity that I have conducted this investigation.

Terms of Reference

- 1.4 Within the agreed Terms of Reference, the purpose of the investigation has been to seek to establish whether Martin Morton was subject to any bullying or other inappropriate behaviour by any officer or Elected Member, or by the Council as an organisation, and to present a report on my findings to [REDACTED]
- 1.5 The Terms of Reference also state that the issues raised are very serious and the surrounding circumstances are complex and that it has not been possible to set a definitive timescale for the investigation. However, the most important consideration is that the investigation is thorough, fair and robust.

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- 1.6 To meet these Terms of Reference I have been concerned to ensure that the ground rules and methodology I have adopted for my investigation, which are shown in section 4, mean that the outcome will provide, for both Martin Morton and the Council, a means by which to secure closure to Martin's grievance/whistleblowing allegations. This is, I believe, what I have been asked to do. Consequently, the findings, conclusions and recommendations in this report are my judgements of the facts based on their merits and are expressed here, specifically, in order to meet the brief I believe I have been given.
- 1.7 Consequently, this report has been prepared at the request of the Council and its Author claims qualified privilege in respect of its contents and appendices.
- 1.8 To facilitate the investigation, a full set of papers and information has been made available to me as background reading including the following:
- The Council's Stop Harassment, Bullying and Victimisation in the Workplace Policy and Procedure;
 - Appropriate legislation e.g. Public Interest Disclosure Act 1998;
 - The Council's Confidential Reporting (Whistleblowing) Policy;
 - The Council's Equality and Diversity Policy;
 - The Council's Grievance Procedure;
 - The Council's Disciplinary Procedure;
 - Martin Morton's HR file;
 - Relevant reports and minutes of the Audit and Risk Management Committee i.e. 30 September 2008, 4 November 2008 and 23 September 2009;
 - Cabinet minute No. 137 dated 24 September 2009;
 - Martin Morton's report to the Audit and Risk Management Committee on 25 November 2009 on DASS' Special Charging policy;
 - Report by the Independent Investigator dated February 2009;
 - Martin Morton's Outline Chronology dated October 2008;
 - Martin Morton's paper entitled "Wirral Council; Whistleblowing and the Abuse of Power" dated March 2010;

I have also added to this list of background reading material, as appropriate, as the investigation has proceeded.

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Outline chronology of events

- 1.9 In order to assist with an overall understanding of Martin Morton's case, I have included an Outline Chronology of Events at Appendix 1. From this, it can be seen that there has been a considerable passage of time since Martin Morton first raised his concerns over issues involving the Supported Living Service.
- 1.10 So far as my investigation is concerned, bearing in mind the passage of time since the events occurred to which Martin Morton's allegations relate i.e. over six years in some cases, I have found that the accounts of the facts have varied between individual witnesses. I do not find this to be at all surprising, given this lapse of time. However, in these circumstances the allegations made by Martin Morton and the statements submitted by all the witnesses I have interviewed, have been considered against the principles of reasonable belief and the balance of probabilities, as supported by independent written evidence where available.

The Legal Position

- 1.11 Employers have a legal duty of care to all employees. Behaviour which can be construed as bullying, harassment and/or victimisation, and the failure to deal with such incidents or allegations, can expose the employer and individual employees to a number of legal consequences.
- 1.12 Employers may be liable for the actions of their employees, whether or not those actions are carried out with the employer's knowledge or approval. This is in addition to the employee's individual liability for her/his own actions. Any legal claims against the employer for bullying or harassment would be concerned with breach of contract and unfair dismissal. That is, the failure of the employer to deal with bullying related issues can result in a fundamental breach if one of the following implied terms of the employment contract:
- To keep employees safe from harm;
 - To provide support and assistance to employees; and
 - To maintain the employee's trust and confidence;

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- 1.13 It is also important to bear in mind that in cases such as this, by their very nature, allegations of abuse of power bullying and harassment may result in those involved i.e. the complainant; those against whom allegations are made; and witnesses; all experiencing emotional or psychological reactions to their experiences. It is essential, therefore, that the management response to these situations is both understanding and supportive.
- 1.14 By the same token, it is also essential that during the conduct of any investigation into such matters, that the same level of understanding is evident for all those taking part and I have endeavoured to ensure that this has been the case throughout this case.

Acknowledgement

- 1.15 During the course of my investigation I have seen a large number of current and former employees as interviewees, commencing with Martin Morton and they have all understood the importance to the Council of ensuring that my investigation is as fair and complete as possible. I would like to take this opportunity to thank them for their help and full co-operation in order to achieve this, which has been much appreciated.
- 1.16 Also throughout my investigation I have been provided with administrative support by [REDACTED], [REDACTED], and [REDACTED] and [REDACTED], HR Officers of the Department of Law, HR and Asset Management. In addition, I have been assisted by [REDACTED] and [REDACTED], also of the Department of Law, HR and Asset Management who have provided secretarial support for correspondence and witness statements. I would like to take this opportunity to express my personal gratitude for their hard work and perseverance over the course of this investigation, which has been greatly appreciated.

Structure of Investigation report

- 1.17 The structure of my investigation report is set out in the contents page and consequently the nature of Martin Morton's allegations are discussed in section 2.

2 NATURE OF MARTIN MORTON'S ALLEGATIONS

Sources of allegations

2.1 The range and nature of Martin Morton's allegations as they were presented initially to senior managers in DASS and then to the Appeals Sub Committee are wide, complex and varied. The sources of these allegations are to be found principally in the following documents:

- (a) Martin Morton's original grievance complaint submitted to DASS on 18 September 2006;
- (b) The notes of (i) informal problem solving meetings set up to discuss Martin Morton's original grievance held on 6 and 28 November and 18 December 2006, and (ii) a formal grievance hearing held on 5 February 2007;
- (c) Martin Morton's 10 questions submitted as requested to DASS on 17 January 2007;
- (d) Martin Morton's written submissions to the Appeals Sub Committee meetings set up to hear his grievance appeal and held on 23 May 2007 and 2 July 2007 i.e. Martin Morton's 'bundle of papers' and his written presentation;
- (e) Notes of the Appeals Sub-Committee meetings as above held on 23 May and 2 July 2007;
- (f) Correspondence between officers e.g. DASS/Corporate HR and Martin Morton in the period following his grievance appeal hearings;
- (g) The notes of (i) an informal problem solving meeting set up to consider Martin Morton's subsequent grievance complaint and held on 28 November 2007 and (ii) a formal grievance hearing held on 20 February 2008;
- (h) The notes of my discussions with Martin Morton held on 2 February, 5 May and 13 December 2010;
- (i) Martin Morton's paper entitled 'Wirral Council, Whistleblowing and the Abuse of Power' March 2010;

Service and Employment Issues

2.2 These documents relate to the events which have led to Martin Morton's allegations and they cover both service and employment issues. Bearing in mind the terms of reference for this investigation, I have concentrated on those allegations which relate to employment issues i.e. particularly those concerning alleged abuse of power/bullying as they relate to the treatment of Martin Morton. These are grievance matters which should be addressed within the Council's appropriate policy and procedure which is discussed in section 3.

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- 2.3 In following this approach I have, of course, been aware throughout my inquiries of all of Martin Morton's concerns, including those relating to service issues. These are whistleblowing matters which should also be addressed within the Council's appropriate procedure. However, while I have considered all of the allegations Martin Morton has made, I have not sought to investigate those which relate to service issues and which, therefore, do not meet with my terms of reference.

Two Perspectives

- 2.4 Consequently with my terms of reference in mind, Martin Morton has alleged that there was a bullying culture in DASS which has led to some of the personal treatment he has received. He has also claimed that he was bullied because he was a whistleblower: that some managers have abused their positions of power which has resulted in him receiving detrimental treatment by the Council as a whole.

- 2.5 As a result, there are two perspectives to those matters I have investigated i.e. (i) allegations based on individual/personal behaviour by officers and Elected Members and (ii) allegations based on the formal actions of the Council as an organisation. For a clear understanding of these allegations, within these two perspectives, I have grouped them according to the type of allegation being made and they broadly comprise the following:

1. Bullying

- 2.6 Bullying can be defined in many ways but is generally behaviour that is identified as a misuse of power. It can be manifest in a single incident, but is usually persistent and is behaviour which is offensive, abusive, intimidating, malicious or insulting. It can also be the unfair use of sanctions which makes the recipient feel upset, threatened, humiliated or vulnerable. Bullying undermines self confidence.

- 2.7 Bullying is not dependent on an intention to cause distress but is assessed by the impact the behaviour has on the recipient. Consequently, it is possible that behaviour which is acceptable to some employees may cause embarrassment or distress to others. Bullying relates, therefore, to the perceptions and feelings of the recipient. As a result, bullying behaviour is mainly identified not so much by what has actually been done, but rather by the effect that it has on the recipient.

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- 2.8 Types of bullying behaviour are shown below as sub headings and, without prejudging matters, I have included a few examples from Martin Morton's allegations of behaviour in this particular case.
- 2.9 This list is neither exclusive nor exhaustive and there may be other forms of behaviour which also constitute bullying and harassment. At the same time, by their very nature, the examples of bullying behaviour listed here could be shown under different group headings e.g. an example of personal bullying behaviour can lead to a denial of due process; or the withholding of information from someone can result in a failure to give them support. Consequently, there can be overlaps/cross references of specific examples between the various group headings shown.

1 (a) Personal Behaviour

- 2.10 Personal behaviour involves 1:1 contact between the person alleged to be bullying and the recipient and relates to personal actions which can be verbal, non-verbal and/or written.

Persistently criticising unnecessarily

At a management meeting on 4 November 2004 when [REDACTED] said...*"Martin what do you actually do?"*;
[See Martin Morton's statement, 2 February 2010, para. 2.9]

Making inappropriate personal comments

At a management meeting on 4 November 2004 when [REDACTED] said: *"Martin, you're just a dogsbody"*
[See Martin Morton's statement, 2 February 2010, para. 2.9]

1 (b) Collective behaviour

Collective behaviour involves two or more people, often departmental colleagues, who take part in joint or concerted action which adversely affects an individual.

Deliberate isolation by ignoring and excluding someone

"... he [Martin Morton] was left with no work to do at all..."
[See Martin Morton's statement, 2 February 2010, para. 2.59]

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Withholding information or removing areas of work without justification

"...he [Martin Morton] had been denied access to departmental files which were relevant to his grievance..."

[See Martin Morton's statement 2 February 2010, para. 2.43]

Failure to support/Undermining someone

By [REDACTED] alleged failure to give Martin Morton support when he:

- (i) Reported unfair criticism of himself by a service provider, in April 2006, i.e. by advising him to contact his trade union;
- (ii) Wished to challenge a Supported Living service provider re: their management of service users DLA payments in July 2006;

[See Martin Morton's written submissions to the Appeals Sub Committee meetings on 23 May 2007 and 2 July 2007, pages 59 and 40 respectively]

- 2.11 Having illustrated these types of bullying as examples of personal behaviour, it is also important to be aware that legitimate, constructive and fair criticism of an employee's performance or behaviour at work does not constitute bullying. There is always the requirement for judgment in assessing whether, given the context and alleged behaviour, it is reasonable to conclude that the behaviour is an instance or example of behaviour which does constitute bullying. On the other hand, it is also important to note that it is unacceptable to condone bullying behaviour under the guise of a particular management style: good managers achieve results while ensuring that their staff are treated with dignity and respect. I have borne these points in mind whilst carrying out this investigation.

3. Abuse of power

- 2.12 *"I worked for Wirral Council between 1990 – 2007 and I maintain that during this time I experienced a dysfunctional and destructive power dynamic which manifested itself in a bullying culture characterised by fear and complicity.*

Therefore I believe a major focus of the bullying investigation commissioned by the Council will need to take account of this abuse of power..."

[See Martin Morton's paper entitled "Wirral Council, Whistleblowing and Abuse of Power" March 2010 page 1]

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- 2.13 This is Martin Morton's starting point for consideration of what is meant by the use of the term abuse of power. I have already defined what I mean by bullying and described both personal and collective examples of this type of behaviour. So far as abuse of power is concerned, it is important to be clear that bullying is a form of abuse of power. However, for the purposes of investigating Martin Morton's allegations, I am using the term abuse of power to describe the improper or inappropriate use of authority by someone who has that authority because they hold a particular office.
- 2.14 In this context, through my investigation, I have sought to establish whether there are any examples of such behaviour contained in Martin Morton's allegations and without prejudging matters, should this prove to be so, I believe such examples would sit alongside those already provided for bullying.
- 2.15 As with bullying behaviour, an abuse of power is not necessarily dependent on an intention to cause distress but, similarly, is assessed by the impact it has on the recipient. Consequently, an abuse of power i.e. an improper or inappropriate use of authority can occur by design or by default. It can be based on someone's intention i.e. it is a wilful act which reflects on that person's personal conduct, or it can be unintentional i.e. it is inadvertent and reflects on that person's capability or competence.
- 2.16 In the context of Martin Morton's allegations, this reference to abuse of power i.e. an improper or inappropriate use of authority relates to the application, or otherwise, of the Council's established policies, procedures and practices which are in place to deal with his allegations.

Power Dynamic

- 2.17 In the extract quoted above from Martin Morton's paper on Abuse of Power, he has also referred to a *"...dysfunctional and destructive power dynamic which manifested itself in a bullying culture..."* In my discussions with Martin Morton it has been vitally important for the quality and integrity of my investigation for me to understand his perception of the use of such a term. From those discussions it is apparent to me that by the use of the term "power dynamic", Martin Morton is making reference to people who are decision-makers in the organisation and who have the position and influence to affect the working practices of their colleagues i.e. their daily operations and decisions. In other words, I believe it is a reference to those in the organisation who affect the life at

work of other employees: managers who have organisational power over employees, for good or ill, and those employees who do not have the freedom to say "...no, I'm not going to do that". I have borne this perception in mind when considering the facts of the matters investigated.

- 2.18 In the context I have mentioned, two types of abuse of power are shown below as sub-headings and, without prejudging matters, I have included some examples from Martin Morton's allegations as possible illustrations of these types of behaviour in this particular case:-

2(a) Denial of due process at Department level

DASS' consideration/discussion and correspondence with Martin Morton regarding his formal grievance/whistleblowing claims between August 2006 and February 2007 i.e.

- (i) alleged long delay;
 - (ii) excessive problem solving meetings;
 - (iii) DASS' alleged lack of intention to investigate his concerns;
- [See copies of relevant correspondence and information during this period]

2(b) Denial of due process at Corporate level

The alleged conduct of the Appeals Sub-Committee's meeting to consider Martin Morton's grievance appeal hearing on 2 July 2007 which he perceived to be a day of prolonged bullying and harassment;

[See Officers' notes taken at the Appeals Sub-Committee meeting, as above, and various statements from those present]

- 2.19 I have included an Overview of Martin Morton's Allegations by Types of Behaviour at Appendix 2

Other claims

- 2.20 In addition to the allegations of bullying and abuse of power, as reflected at Appendix 2, Martin Morton has also made other claims which, in view of their nature, I felt required some examination. A summary of these claims is shown below:-

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Nepotism

"When I worked for DASS this widespread perception (i.e. nepotism) was reflected in persistent references to "the Halton Mafia" and "The Junta"

I assume the former term is, no doubt, a reference to the high proportion of appointees from Halton Council that followed in the wake of [REDACTED] appointment to Wirral DASS..."

"I can also recall... a female member of the DASS Finance Section who was sent a letter of apology from [REDACTED] after claims of nepotism in relation to recruitment practices were found to be proven"

[See Martin Morton's paper entitled "Wirral Council, Whistleblowing and the abuse of power" March 2010 page 17]

Pay off to a Whistleblower

"The tendency to lower the profile of AP (Adult Protection) concerns in relation to XXX (a service provider) was consistent. The most striking example of this complicity was the "paying-off" of [REDACTED] officer [REDACTED] who, having whistleblown to [REDACTED] about XXX was, I understand, [REDACTED] in June 2005.

[See Martin Morton's written submission to Appeals Sub-Committee 23 May 2007, page 19]

2.21 These are references to potentially very serious matters and in view of their possible significance to Martin Morton's case, I felt that it was important to examine them. I have, therefore, included both of these claims in section 5: Investigation Findings.

2.22 In order to investigate all these categories of allegations it has been important to relate them to the Council's most appropriate policy, procedure and practice for such matters and these considerations are discussed in Section 3.

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3 POLICIES AND PROCEDURES

3.1 The Council has established policies, procedures and practices in place to address any complaints which may be made by its employees. These are:-

- (i) Stop Harassment, Bullying and Victimisation in the Workplace Policy (HBV policy);
- (ii) Grievance Procedure; and
- (iii) Confidential Reporting (Whistleblowing) Policy;

The question as to which of these policies and procedures is appropriate to be used in this particular case depends upon the nature of the complaints or allegations being made.

3.2 Each policy and procedure is designed to deal with specific types of complaint, as shown below:-

Stop Harassment, Bullying and Victimisation

"Definition:

Harassment means unreciprocated and unwelcome comments, looks, actions, written materials, suggestions or physical contact that is found objectionable, and/or offensive by the recipient and may create an intimidatory working environment".

Examples include the following:-

- | | | |
|-----------|---|--|
| Physical | - | Unwanted physical contact or intimidation... |
| Verbal | - | Remarks, derogatory or lewd comments... |
| Written | - | Graffiti and other written insults... |
| Pictures | - | Discriminatory email, displaying pictures... |
| Behaviour | - | Making threats against a person... |
| Bullying | - | Shouting/harassing or using other forms of intimidating behaviour. |

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Grievance Procedure

"It is impossible to provide a comprehensive list of all the issues that might give rise to a grievance, but the more common types of grievance include terms and conditions of employment (excluding grading) health and safety, relationships at work, new working practices, organisational changes and equal opportunities..."

Confidential Reporting (Whistleblowing) Policy

"Whistleblowing can be defined as: the disclosure by an employee (or professional) of confidential information which relates to some danger fraud or other illegal or unethical conduct connected with the workplace, be it from the employer or of fellow employees"

[NB: This definition was added to the policy in 2009]

Examples include the following:

Serious concerns include:

- Conduct which is an offence or breach of law;
- Disclosures related to miscarriages of justice;
- Health and safety risks, including risks to the public or employees;
- Damage to the environment;
- The unauthorised use of public funds;
- Possible fraud and corruption;
- Sexual or physical abuse of clients;
- Verbal abuse;
- Other unethical or improper conduct;

- 3.3 There is a cross-referencing paragraph which was added to both the Grievance procedure and the Confidential Reporting (Whistleblowing) policy in 2009, which reads as follows:

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

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3.4 Given the nature of Martin Morton's allegations which lie within my terms of reference, as shown in section 2 i.e.:

- Excessive workload/role clarification;
- Bullying – personal and collective behaviour; and
- Abuse of power – denial of due process;

for the sake of clarity, bearing in mind the weight of the allegations towards bullying and abuse of power, it is clear to me that any investigation of these complaints should be carried out in accordance with the Council's policy to stop harassment, bullying and victimisation in the workplace. Consequently, I have conducted this investigation in accordance with the principles and procedures of this policy.

3.5 However, at this point, it is important to remember that Martin Morton's allegations, as presented to DASS and then to the Appeals Sub-Committee, were contained in those core documents mentioned in para 2.1. As previously mentioned, it is clear that they covered both service issues and employment issues. Consequently, while the employment issues were appropriate to be dealt with via either the Grievance procedure or Harassment, Bullying and Victimisation (HBV) policy, the service issues were more appropriate to be dealt with via the Confidential Reporting (Whistleblowing) policy. However, during the course of this investigation I have been struck by the fact that all of Martin Morton's allegations were dealt with according to the Council's Grievance procedure. This is an important point and is discussed fully in section 5.

3.6 Having determined the appropriate policy for the conduct of my investigation, I have set out the Investigation Process which is discussed in section 4.

4 INVESTIGATION PROCESS

- 4.1 Following an initial delay due to Martin Morton's ill health, my investigation began with a meeting with Martin Morton on 2 February 2010. This was a formal meeting arranged in order for me to (i) understand the nature of Martin Morton's complaints and why he was making them; (ii) establish the facts of the case as Martin Morton perceived them; and (iii) agree a way forward for my investigation.
- 4.2 A note was taken of this meeting and sent, as agreed, in draft form to Martin Morton on 18 February 2010 for consultation and confirmation as to its accuracy. Correspondence from Martin Morton on 21 February, 25 March, 19 May and 26 May 2010 led to revisions in the notes and a final agreed copy was sent to him on 27 May 2010.
- 4.3 Following our initial meeting, I had further discussions with Martin Morton on 5 May and 13 December 2010.
- 4.4 From the outset of this investigation process I have endeavoured to ensure that my investigation is comprehensive, thorough and as complete as possible and I have, therefore, seen a large number of people as witnesses in order to achieve this. In this particular case I have found that the size of the task has been unusually large. Following my formal interview with Martin Morton on 2 February 2010 I drew up an initial list of interviewees. This list has expanded in light of the progress of the investigation and the contribution which each interviewee could make to the investigation in terms of (i) establishing the facts of the matters under review; or (ii) corroborating, or otherwise, information already given to me.

List of Interviewees

- 4.5 A copy of this list of interviewees is shown at Appendix 3. The list comprises 29 people who have all agreed their witness statements as an accurate record of our discussions. In total, these witness statements have contributed over 125000 words of evidence in support of the investigation.
- 4.6 This list of interviewees could have been expanded further based on a small number of other Wirral Council employees who, having become aware of this investigation, felt that they would wish to contribute. However, I have not seen all of these potential witnesses because, although they wanted to speak to me about similar matters, i.e. alleged bullying behaviour in DASS, following my brief discussions with them,

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it was apparent that their comments would not relate to *"the treatment of Martin Morton in relation to his allegations of bullying"* and would, therefore, be outside my terms of reference.

- 4.7 Also, I did speak informally to a small number of potential witnesses not employed by Wirral Council who I would have liked to have seen. However, in each case, for a variety of reasons, they did not wish to take part. I have, therefore, respected their wishes and their confidentiality.
- 4.8 There have also been discussions with two former Council employees who I would have liked to have interviewed but who declined my invitation. These are [REDACTED] and [REDACTED] who, following due consideration in the light of my requests for them to do so, decided they did not wish to take part in the investigation.
- 4.9 Consequently, I have aimed to strike the appropriate balance in determining my list of interviewees and the contribution each has been able to make to the investigation.

Ground rules

- 4.10 In accordance with the HBV policy I have conducted my investigation according to a set of good practice ground rules as follows:
- The investigation will be comprehensive, thorough, honest, open and proportionate;
 - I have kept an open mind and made my judgements of the facts on their merits;
 - I have been fair and equitable to all those who have participated and maintained strict confidentiality throughout;
 - I do not necessarily expect that everyone will agree with all my findings but based on the structure of my investigation report, they will be able to see how I have reached my conclusions;

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4.11 As a preliminary to my discussions, I informed each interviewee of the protocols for our meeting as follows:

- They may be accompanied;
- A note would be taken and agreed with them;
- The note would be used to form part of the basis of my investigation report;
- A copy of the whole or part of the note may be made available to other employees or former employees who I may need to speak to;
- There was the possibility of a follow up discussion;
- The investigation report may be made available to those involved and may possibly be referred to during subsequent disciplinary and/or Employment Tribunal proceedings should there be any, and it may therefore become public;
- All interviewees were requested to observe strict confidentiality concerning the details of the allegations and the investigation into them.

Methodology

4.12 In accordance with good practice, I have adopted the following methodology throughout the investigation process i.e.:

- Ascertain the facts of Martin Morton's allegations by reference to the core documents available to me and by interviewing all appropriate people;
- Prepare a draft note of each of my interviews and agree it with each interviewee as an accurate record of our discussion;
- Establish my findings based on these agreed statements;
- Draw my conclusions based on those findings;
- Make my recommendations based on those conclusions;
- Prepare my investigation report setting out the outcome of my investigation; and
- Send a copy of my completed Investigation Report to [REDACTED], Director of Law, HR and Asset Management, for consideration.

4.13 Using this methodology, I have set out my Investigation Findings in section 5.

5 INVESTIGATION FINDINGS

5.1 The range of Martin Morton's allegations is wide and full details are contained in the documents listed at para. 2.1

5.2 Based on the information available to me through the investigation I have conducted, for reasons of clarity, my findings are grouped according to the overview of Martin Morton's allegations mentioned previously. Details are as set out below:-

1 Bullying – Personal Behaviour

5.3 Bullying - Personal behaviour involves 1:1 contact between the person alleged to be bullying and the recipient and relates to personal actions which can be non-verbal, verbal and/or written. Martin Morton alleges he was bullied as follows:-

Persistently criticising unnecessarily

Allegation 1(A)

At a management meeting on 4 November 2004 when [REDACTED] said "...Martin, what do you actually do?"

Statement

5.4 Martin Morton has stated that he had several discussions with senior colleagues about one particular service provider, XXX, and at a meeting on 4 November 2004 he felt aggrieved. He alleged that at that meeting attended by [REDACTED], [REDACTED], [REDACTED] and other senior managers, [REDACTED] said to him "what do you actually do" and went on to say that he was "doing things he should not be doing and not doing things he should".

Comments

5.5 I discussed this allegation with [REDACTED]. Details are shown below:

[REDACTED]

5.6 [REDACTED] confirmed that [REDACTED] recalled the meeting but could not confirm who was present. [REDACTED] said that the context of the discussion was about the work undertaken by Martin Morton. Initially, [REDACTED] could not remember the comment which Martin Morton alleges [REDACTED] made. However, [REDACTED] did remember the context in which, [REDACTED] said, lots of

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people wanted Martin Morton to do things for them and [REDACTED] was concerned that Martin was "*spreading himself too thinly*". Consequently, [REDACTED] wanted to look at what he was doing in order to sort things out. [REDACTED] indicated that [REDACTED] tone was constructive and supportive.

- 5.7 Subsequently, [REDACTED] indicated that, on reflection, [REDACTED] could remember asking Martin Morton what he did. As indicated above, this was in the context of wanting to look at the issue of Martin "*spreading himself too thinly*".

Findings

- 5.8 It is clear that [REDACTED] did ask Martin Morton what he did. The context in which this question was asked is also clear: a concern that Martin Morton was "*spreading himself too thinly*".
- 5.9 What is also evident from the discussions I have held on this point is that the perceptions held of the tone of the question are quite different. On the one hand, [REDACTED] believes [REDACTED] was being constructive and supportive while, on the other hand, Martin Morton believes the tone was negative and critical.
- 5.10 I believe that Martin Morton's stance is based not only on the tone of the expression, but also on the words used which seem to place an emphasis on the word "*actually*" and in my view, if these were the words used and bearing in mind the context which [REDACTED] has outlined, this does give the question a pejorative intonation. I understand that from [REDACTED] perspective this may not have been [REDACTED] intention but, if [REDACTED] was trying to be constructive and supportive, the phrasing of the question in this way seems to be, at best, unfortunate and, at worst, inappropriate.
- 5.11 In this context it is important to comment on the impact which the question has had on the two people concerned. [REDACTED] could not immediately recall what [REDACTED] said. However, Martin Morton has felt the need to complain about it as part of his grievance. In accordance with the good practice definitions I am using in this report, and also the Council's own HBV policy on such matters, it is not the intention behind such personal behaviour which defines it but the impact it has on the recipient.

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- 5.12 I did wish to speak to [REDACTED] about this matter, as I understand [REDACTED] was Martin Morton's [REDACTED] at the time and may have been present at the meeting on 4 November 2004. However, for the reasons mentioned earlier, I have been unable to do so. Bearing in mind the passage of time since this incident occurred i.e. over 6 years, I have not sought to discuss the matter with anyone else.

Conclusion: Allegation 1(A)

- 5.13 Based on my findings and the balance of probabilities, I have concluded that Martin Morton was bullied as he has claimed.

Allegation 1(B)

By [REDACTED] and [REDACTED] alleged unreasonable criticism of Martin Morton for referring in correspondence to an Elected Member of the Council by [REDACTED] first name;

Statement

- 5.14 Martin Morton has stated that this issue relates to an e-mail exchange when he was trying to arrange a meeting between the Elected Member, Officers including [REDACTED], and representatives of a Residents Association. He stated that in an e-mail from the Residents Association they had referred to the Elected Member by [REDACTED] first name and asked Martin Morton to send [REDACTED] copies of minutes of a meeting: he replied to say he would do so and referred to the Councillor in the same way that the residents had done.
- 5.15 He said that this exchange involved dozens of communications during which at no other time did he refer to Councillor X other than in the accepted form of address.
- 5.16 He has also stated that the fact that he received two e-mails in the same day, one from the [REDACTED], [REDACTED] and one from [REDACTED], "picking me up for this grave error of judgement" he found to be perplexing. Martin Morton felt that the fact that he had arranged the meeting and resolved a potentially serious dispute was totally ignored.
- 5.17 Martin Morton included a reference to this matter in one of the questions he put to the [REDACTED] on 17 January 2007 as the issues he wished the [REDACTED] to answer in a formal grievance hearing: he said "If you and your [REDACTED] can criticise myself on the same day for disrespecting a Councillor by referring to her by her first name can you understand that I have come to believe that DASS regard respect to be an entitlement dependent purely on hierarchy".

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Comments

- 5.18 I discussed this allegation with [REDACTED]. Details are shown below:

[REDACTED]

- 5.19 [REDACTED] stated that the former [REDACTED], [REDACTED], was "a stickler" for protocol and how Elected Members should be addressed and, consequently, even now [REDACTED] did not address Councillors by their first name. Therefore, when Martin Morton had done this, [REDACTED] had felt obliged to tell him about it via an email: [REDACTED] confirmed [REDACTED] would do the same again if the need arose. When asked if the occasion arose again in future whether [REDACTED] would have a personal word with the staff member concerned, [REDACTED] replied that it would depend on the circumstances: Elected Members often like to be referred to as Councillor rather than by their first name. If the officer concerned had addressed a Councillor inappropriately in an email, [REDACTED] suggested that [REDACTED] would respond in like manner. [REDACTED] stated that this was part of the culture in DASS - both then and now.

- 5.20 Separately, in his reply to Martin Morton's question, as mentioned above, [REDACTED] said in his letter of 12th March 2007 *"I am very sad to see that you regard respect to be based on hierarchy. It is convention and out of respect for the position that they hold that during Council business Councillors should be addressed as Councillor "X". I was not criticising but clearly putting to you the correct form of address to follow. In my meetings with carers, people who use our service, unless they request otherwise I will refer to them by their title"*.

Findings

- 5.21 The [REDACTED] takes the lead in setting the tone and determining the attitude of the department: this is normal practice. Based on my discussions during this investigation, it is clear to me that [REDACTED] was keen to set departmental standards and protocols for DASS as part of his approach to getting the department out of special measures.
- 5.22 It is to be expected that all staff of the department, especially senior managers such as [REDACTED], would not only adhere to the standards and protocols set but would also require their own staff to do so too. This is also normal practice.

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5.23 It seems clear to me that Martin Morton was aware of the particular protocol on how to address Elected Members of the Council and he followed it but for this one isolated occasion when, for understandable reasons, he did as he says, within the context of seeking to be proactive in avoiding a dispute with the Residents' Association.

5.24 It is also worth noting that both [REDACTED] and [REDACTED] chose to remind Martin Morton of the departmental protocol in a rather formal manner via email. It seems that this approach reflected the departmental culture which [REDACTED] preferred. However, in the context of Martin Morton seeking to solve a problem, I believe it appeared 'heavy-handed' to him. In the circumstances, perhaps it could have been done with a bit more understanding and [REDACTED] could have been left to take a softer approach on a personal basis: hence my question to [REDACTED] about any future occurrences. However, as [REDACTED] has said *"If the officer concerned had addressed a Councillor inappropriately in an email... [REDACTED] would respond in like manner."*

Conclusion: Allegation 1(B)

5.25 Based on my findings it is clear that a reminder about a Departmental protocol sent via e-mail is part of the established culture in DASS and consequently, while it is rather formal, I do not believe that to do so in this case is an example of bullying behaviour.

Allegation 1(C)

By [REDACTED] alleged unreasonable criticism of Martin Morton for copying an e-mail to junior officers;

Statement

5.26 Martin Morton has stated that as part of DASS' proposals to improve the monitoring of Supported Living services, together with a colleague, he had drawn up an Accreditation Scheme for all service providers. He stated that he had been unhappy with some of the decisions made in the accreditation process and had decided to withdraw from it. Consequently, this allegation relates to his withdrawal from the accreditation process where he claimed that the issue had become more about his *"daring to question a senior officer rather than the issues I was trying to raise."* He had sent an e-mail to [REDACTED] to inform [REDACTED] that this was his position and had copied it to those other officers who had been involved in the accreditation process.

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- 5.27 [REDACTED] reply was contained in a memorandum dated 18 April 2006 when [REDACTED] said "...You have also decided, of your own volition, to withdraw from the accreditation process for supported living. I have received all relevant e-mail correspondence and cannot see the rationale for your action. In the lead up to this point, I needed to remind you not to send e-mails to myself, as a senior officer, with eight other junior officers copied in. This is a basic courtesy of which you should not need to be reminded..."

Comments

- 5.28 I discussed this allegation with [REDACTED]. Details are shown below:

- [REDACTED]
- 5.29 [REDACTED] explained that supported living service providers who did not receive supporting people funds did not need to be accredited and there was no licensing regime in place for such service providers at that time. Consequently, the accreditation scheme was put into place. [REDACTED] suggested that Martin Morton felt that some organisations should not be allowed to apply for accreditation. However, [REDACTED] pointed out that if such organisations appear to meet the required criteria on paper, then they have to go to the next stage of the process.

- 5.30 [REDACTED] next went on to state that [REDACTED] agreed with Martin Morton on some aspects of the accreditation process: it was an open-ended programme with no time limits, so it went on too long. However, from a legal perspective, [REDACTED] pointed out that the Council could not simply say no to such service providers without potentially becoming involved in complaints about restraint of trade.

- 5.31 [REDACTED] also reflected that if [REDACTED] had been going through the same process now, [REDACTED] would give Martin Morton the lead role in it – as a development opportunity. [REDACTED] felt he would have made a better job of it as he had contributed a lot to the process.

- 5.32 [REDACTED] then went on to explain that [REDACTED] reference to courtesies in emails was concerned with Martin's declared intention to [REDACTED] of withdrawing from the accreditation process, when he had also copied in several other colleagues to the email. [REDACTED] felt he was "washing dirty linen in public" and he should not have done so. [REDACTED] felt that, in effect, he was saying "let's see what she says to this" and [REDACTED] felt that it was necessary to remind him of the correct way to do things.

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Findings

- 5.33 The accreditation process was a positive and important attempt to improve standards in the supported living service. Martin Morton was closely involved from the outset and together with a colleague he drafted the process for DASS. Clearly, Martin Morton felt strongly about the purpose of the process and also the issues it highlighted for some existing service providers.
- 5.34 [REDACTED] has stated that from a legal perspective the Council could not say no to these existing service providers without potentially inviting legal challenges which would have to be defended. This is a reasonable position for a senior manager to take.
- 5.35 Martin Morton has made it clear to me that he felt strongly enough about the issues to withdraw because, in all conscience, he did not want to be party to a process which would in due course accredit service providers which he believed were abusing service users and who, as a result, he regarded as being totally unsuitable to deliver the supported living service. Consequently, Martin Morton took his decision to withdraw and decided to commit this to an email which he sent to [REDACTED] and other colleagues and to which [REDACTED] replied in writing.
- 5.36 It seems clear to me that there was very little dialogue happening here: rather, there were two monologues conducted at a distance. Martin Morton chose the formal medium of an email to indicate his withdrawal from the accreditation process because he wanted his colleagues to be aware of his position. However, [REDACTED] saw this as "*washing dirty linen in public*" and he should not have done so. It seems that [REDACTED] felt Martin Morton should have taken up the issue with his senior managers more privately. This is also a reasonable position for a senior manager to take, although this view seems not to have been conveyed or discussed with Martin Morton.
- 5.37 If you are unhappy with your senior manager's approach to a particular matter and want to raise the issue i.e. "wash dirty linen" as [REDACTED] put it, you should be discrete and circumspect, at least initially, in doing so. In this way it is possible to respect the integrity of each other's position and begin dialogue. To open up any such exchange to a wider group is potentially damaging to morale in the wider department and corrosive for working relationships with those senior managers involved.

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- 5.38 However, by the time of this exchange, in April 2006, the issues in Supported Living were already a long running saga, especially for Martin Morton, and it seems that this formal approach not only matches the communications style in DASS but also reflects the state of working relationships between Martin Morton and his senior managers over Supported Living issues.
- 5.39 It is never good to "*wash dirty linen in public*" and it may be that [REDACTED] was correct not only when [REDACTED] said that it should not happen: but also when [REDACTED] said that, in effect, Martin Morton was being insubordinate. If [REDACTED] was correct in this latter claim, then this too is a strong indicator of the state of their working relationship at this time.
- 5.40 In these circumstances, it is unfortunate that nothing more positive was done to address this position of deteriorating working relationships in order to try to improve them, or at least, to prevent them from getting any worse, which subsequently they did. [REDACTED] appears to have accepted this point when [REDACTED] stated that if [REDACTED] were going through the same accreditation process now, [REDACTED] would ask Martin Morton to lead it. If [REDACTED] had done so then it seems likely this allegation would not have arisen.
- 5.41 Consequently, Martin Morton could have handled the question of his stance on the accreditation process more sensitively than he did if he wanted to get support for his position. But, equally, [REDACTED] could have dealt with it better: [REDACTED] fell back on the formality of a memorandum which told Martin Morton "*... not to send emails to myself, as a senior officer, with eight other junior officers copied in. This is a basic courtesy of which you should not need to be reminded...*" rather than have a personal word with him to address [REDACTED] specific point regarding not "*washing dirty linen in public*", supported if necessary by written confirmation of their conversation.
- 5.42 Consequently, it appears that [REDACTED] reasonable position on this point was not conveyed in [REDACTED] memorandum which places an emphasis on basic courtesies between senior and junior officers.
- 5.43 This is unfortunate and, I believe, it is a further example of the culture in DASS and the management style of this particular division of the department which appears to be distant, formal and reactive.

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Conclusion: Allegation 1(C)

- 5.44 Based on my findings, while this exchange contributed further to the deteriorating working relationships between Martin Morton and his senior managers, in these particular circumstances, I do not believe that [REDACTED] reminder to Martin Morton not to send his e-mail to other officers was unreasonable criticism of him.

Making inappropriate personal comments

Allegation 1(D)

At a meeting on 4 November 2004 when [REDACTED] commented that Martin Morton was "*just a dogsbody*";

Statement

- 5.45 I have already mentioned that Martin Morton has stated that he had several discussions with senior colleagues about one particular service provider, XXX and at a meeting on 4 November 2004, attended by [REDACTED] and other senior managers, he felt aggrieved. He also alleged that at that meeting [REDACTED] said "*Martin, you're just a dogsbody*". Martin Morton said he felt dumbstruck and almost made a grievance complaint.

Comments

- 5.46 I discussed this allegation with [REDACTED] and [REDACTED]. Details are shown below:

- [REDACTED]
- 5.47 [REDACTED] indicated that he did not recall making this comment but he accepted that he did say something to that effect, because [REDACTED] had mentioned it to him after the meeting. [REDACTED] felt that the comment was likely intended as a "*throwaway line*" but it had been mentioned in his supervision notes with [REDACTED]. He acknowledged that others might not treat the remark as a "*throwaway line*".

- 5.48 [REDACTED] went on to say that he would have welcomed the opportunity to apologise to Martin Morton but he was wary of how Martin may have received such an apology. Consequently no apology was ever given.

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5.49 [REDACTED] also said that [REDACTED] had mentioned the same remark when he had been preparing the [REDACTED] response to Martin Morton's original grievance.

5.50 [REDACTED] went on to say that he now accepts that it was an inappropriate comment to make for which there should have been an apology. He also accepted the potential impact on his longer term working relationship with Martin Morton that such a comment would be likely to have.

[REDACTED]

5.51 [REDACTED] stated that [REDACTED] had spoken to [REDACTED] about [REDACTED] comment. Although Martin Morton had raised this in his original grievance in 2006, [REDACTED] recalled that [REDACTED] had said nothing at the meeting at which it was said and had not taken the issue up after the meeting with either [REDACTED] or with [REDACTED].

Findings

5.52 To say to someone that "... *you're just a dogsbody*..." is clearly an inappropriate comment: it is insulting and humiliating. It is not difficult to envisage the setting in which the comment was made i.e. a meeting with Departmental senior managers present who were discussing Martin Morton's role and workload. First [REDACTED] says "...*Martin, what do you actually do?*" and then [REDACTED] says "[remember Martin] *you're just a dogsbody*". We can all put ourselves in Martin Morton's place and imagine what it feels like to be the recipient of such a comment from a senior manager. Nobody would forget such a moment and, of course, Martin Morton has not done so because two years later he included a reference to this comment in his original grievance submitted to DASS.

5.53 It is also not difficult to imagine the effect such a remark would have on Martin Morton's working relationship with [REDACTED]. At the time they did not work closely together, but later in May 2007, after a departmental restructure, [REDACTED] became Martin Morton's [REDACTED]. Without an apology for his remark, I believe [REDACTED] would have forfeited Martin Morton's respect with such a damaging public comment. Their working relationship would have been detrimentally affected accordingly.

5.54 [REDACTED] said he would have liked to have made an apology and, of course, from May 2007 he had ample opportunity to do so. In fact, at one point, he suggested to Martin Morton that they should arrange to meet outside of work in order to "clear the air" but Martin Morton had declined the offer and [REDACTED] had not taken the matter any further.

5.55 The organisational impact on DASS of [REDACTED] remark should not be underestimated. It seems to me that the only way for [REDACTED] to repair the damage [REDACTED] remark caused would have been to apologise unreservedly and preferably on the record: it is then up to Martin Morton to decide whether to accept it. Moreover, as Martin Morton's [REDACTED] from May 2007, it seems to me that the only way [REDACTED] had of seeing that their new, close working relationship was effective was for [REDACTED] to make that apology at the outset of their new reporting arrangements. Without this, [REDACTED] was, I believe, compounding [REDACTED] error and by doing so [REDACTED] was ensuring that things would only get worse, as indeed they did. By January 2008 [REDACTED] wrote to [REDACTED] to say "*...unless the situation changes, I am unwilling to continue to [REDACTED] him...*"

5.56 In their broader context, these events demonstrate poor practice on the part of DASS in their management of Martin Morton's grievance. He had submitted his grievance to DASS (which alleged he had been bullied and made a reference to this remark from [REDACTED]) in September 2006 and his appeal to Elected Members was pending. On Martin Morton's return to work on 8 May 2007, [REDACTED] became Martin Morton's [REDACTED]. Without a determined and professional departmental approach to addressing [REDACTED] error (e.g. [REDACTED] could have insisted that [REDACTED] gave an apology to Martin Morton), [REDACTED] position as Martin Morton's [REDACTED] was destined to make Martin Morton's grievance matters worse.

Conclusion: Allegation 1(D)

5.57 I have concluded that Martin Morton was bullied by [REDACTED] as he claims.

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Allegation 1(E)

At a meeting on 17 January 2006, when allegedly being told by [REDACTED] to put his moral considerations to one side;

Statement

5.58 Martin Morton stated that during his series of discussions with [REDACTED] about certain supported living service providers he was told that DASS did not have any statutory powers to intervene. When he asked [REDACTED] about the moral obligation to protect vulnerable people from abuse he claimed that [REDACTED] asked him (Martin Morton) to "put your moral considerations to one side".

5.59 Martin Morton also included a reference to this matter in one of the questions he put to the [REDACTED], as requested, on 17 January 2007 which represented the issues he wished the [REDACTED] to answer in a formal grievance hearing: he said "...Is it OK to ask a member of staff to "put their moral considerations to one side" because they highlight "an inconvenient truth"..."

Comments

5.60 I discussed this allegation with [REDACTED]. Details are shown below:

[REDACTED]

5.61 In [REDACTED] reply of 12 March 2007, [REDACTED] set out the Department's position on each of the 10 questions Martin Morton had raised. [REDACTED] also said, inter alia, that "...with regard to moral considerations, this is a judgement each of us must make to each situation we come across. If you feel that something is fundamentally wrong and by trying to progress issues through the formal channels you feel you are not achieving anything then there comes a point where a final decision is made. In this case you move on or leave". [REDACTED]

[REDACTED] stated that the question of moral considerations was key in that Martin Morton was demanding that the authority took action without the necessary evidence to justify statutory intervention and in part without the statutory power, which now rested with CSCI. [REDACTED] was clear that it was for individuals to make their own judgement about whether they could continue working in an organisation whose remit or approach conflicted with their own stance. When they can't reach that accommodation it is open for them to resign.

Findings

5.62 Martin Morton was concerned to see that DASS was taking prompt and direct corrective action against certain service providers who he alleged were abusing service users and he was told by [REDACTED] that DASS had no statutory base on which to do so. In response to this, Martin Morton referred not to the statutory basis for such action, but to what he saw as the moral issues involved in not taking such prompt and direct action and, again, was told to "...put your moral considerations to one side".

5.63 I believe the question here is whether [REDACTED] response was the appropriate one to make. In effect, [REDACTED] was saying to Martin Morton [my words] "you've raised your grievance question and I've given you the answer by stating the department's position. If you are not happy with the department's position you are free to leave". In other words: there's nowhere else to go.

5.64 However, such a response raises the question, in the circumstances [REDACTED] describes i.e. *"...by trying to progress issues through formal channels you feel you're not achieving anything, then there comes a point where a final decision is made. In this case you move on or leave"*, of whether all of the formal channels open to Martin Morton had been used in order to progress his claims. The moral considerations in point were those relating to service issues, as specified in Martin Morton's original grievance, dated 18 September 2006, i.e. *"...d) collision with abuse..."* and in his letter of appeal, dated 23 May 2007 i.e. *"... unethical/illegal practice including widespread and prolonged collision with abuse; gross maladministration; and financial mismanagement"*. Bearing in mind the nature of those issues, the Council has a policy and procedure in place specifically to deal with such concerns from an employee when, as [REDACTED] says *"... a final decision is reached"*: it is the Confidential Reporting (Whistleblowing) Policy.

5.65 At the time of [REDACTED] letter to Martin Morton, the Council's Whistleblowing Policy stated:

"... It's your(ie the employee's) responsibility to whistleblow if you have genuine concerns about the mistreatment of people; financial malpractice; miscarriage of justice; abuse in care; dangers to health and safety, risks to the environment; and cover-ups. "We expect employees, and others that we deal with, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns,

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rather than overlooking a problem or 'blowing the whistle' outside..."

"...the policy is intended to provide you with an overview within the Council to raise concerns."

[Whistleblowing Policy circa 2007]

5.66 In [REDACTED] reply of 12 March 2007, [REDACTED] was, of course, speaking for [REDACTED], but it appears that [REDACTED] seems either not to be aware of this Council-wide Whistleblowing policy or [REDACTED] has chosen to disregard it. In either case, DASS has not sought to pursue the internal Whistleblowing route, as mentioned in the policy, or given Martin Morton advice on his entitlement to do so in these circumstances where *"... a final decision is made"*.

5.67 [REDACTED] clearly held the view that DASS did not have *"... the necessary evidence to justify statutory intervention and in part the statutory power which now rested with CSCI..."* Consideration of such a judgement is not a concern of this investigation. However, [REDACTED] other judgement is i.e. that *"... it is for individuals to make their own judgement about whether they could continue working in an organisation whose remit or approach conflicted with their own stance. When they can't reach that accommodation it is open for them to resign"*. I believe Martin Morton should have been advised that this response conveyed DASS' position and if he wished to take the matter further he should use the Council's Whistleblowing Policy. Not to do give such advice is inappropriate and can lead to a denial of due process for the employee.

Conclusion: Allegation 1(E)

5.68 I have concluded that while [REDACTED] request to Martin Morton to *"put his moral considerations to one side"* may not be evidence of personal bullying behaviour, the Department's failure to consider the formal channel of the Whistleblowing Policy for Martin Morton's service complaints was inappropriate behaviour which contributed to a denial of due process in Martin Morton's case.

Allegation 1(F)

Allegedly being summarily dismissed from a meeting by [REDACTED] saying "Thank you Martin, NO I mean THANK YOU";

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Statement

- 5.69 This issue refers to Martin Morton's claim that he was systematically excluded from attending SP Core Strategy Development Group, Learning Disabilities Partnership Board (except for a guest appearance to evidence what work he was doing in the Valuing People Housing Group) or planning days. He stated that this allegation related to an occasion when he was asked by [REDACTED] to do a presentation about supported living to a group of senior managers so that they could be briefed about the subject prior to an Inspection visit the next day. He has claimed that, after giving his presentation, he was summarily dismissed from the meeting just before the lunch break *"...by the phrase uttered with withering contempt by [REDACTED] 'Thank you Martin, NO, I mean THANK YOU which I took to mean 'get back in your corner'."*

Comments

- 5.70 I discussed this allegation with [REDACTED]. Details are shown below:

- [REDACTED]
- 5.71 In responding to this claim, [REDACTED] pointed out that the SP Core Strategy Group was led by the Council's Housing Department and attended by the Probation Service and NHS as well as Council officers. The DASS place at the meetings was initially taken by Martin Morton's [REDACTED], who was [REDACTED] at that time. [REDACTED] indicated that later the Joint Commissioning Managers (e.g. [REDACTED]) attended on behalf of both Health and Social Services.

- 5.72 So far as the LDP Board meetings were concerned, [REDACTED] indicated that the Housing Department had a place at these meetings and there was no reason for Martin Morton to attend. Consequently, [REDACTED] felt that it wasn't a case of specifically excluding Martin from attending it.

- 5.73 On the question of Martin Morton attending the planning day to give his presentation, [REDACTED] said that this was a meeting for Service Managers and not for staff at Martin's level. [REDACTED] had said thanks to him at the end of his presentation and he could have stayed for lunch, however, [REDACTED] would not have expected him to stay for the full meeting.

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Findings

- 5.74 It seems clear that, on the conclusion of Martin Morton's presentation to the SP Core Strategy Group, [REDACTED] had said thanks to Martin Morton for his presentation. However, the perceptions which are held of the tone of this statement are quite different. On the one hand Martin Morton believes [REDACTED] was treating him contemptuously and to illustrate this he has placed his emphasis not so much on the words used themselves, but on the way in which they were spoken.
- 5.75 However, [REDACTED] has stated that [REDACTED] thanked Martin Morton in the normal way and while he could have stayed for lunch, it would not have been appropriate for him to stay any longer.
- 5.76 Given that these two accounts of what was said are so different it would be helpful to have the views of any other officers who may have been present. However, this has not been possible on this occasion and consequently I have found the evidence in support of this allegation to be inconclusive.

Conclusion: Allegation 1(F)

- 5.77 Based on my findings I have been unable to reach a conclusion concerning this allegation.

Allegation 1(G)

Allegedly being called, by a former colleague, [REDACTED] *little gofer boy*";

Statement

- 5.78 Martin Morton has stated that a former colleague who was DASS' [REDACTED] "...on emerging from [REDACTED] room one day enquired as to whether I was still [REDACTED] *little gofer boy*?" He said that as he did not work closely with this colleague he has been intrigued as to where this negative, deeply patronising view emanated from. He wondered if this was the general perception of himself held by the Department or whether it was derived from a specific source.

Comments

- 5.79 The colleague concerned left the Council's employment in May 2005 and consequently I did not discuss this comment with them.

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Findings

- 5.80 In the circumstances I have found the evidence in support of this allegation to be inconclusive.

Conclusion: Allegation 1(G)

- 5.81 Based on my findings I have been unable to reach a conclusion concerning this allegation.

Allegation 1(H)

Allegedly being told by [REDACTED] that he (Martin Morton) did not understand the bigger picture;

Statement

- 5.82 Martin Morton has stated that in his discussions with the former [REDACTED], [REDACTED] defended DASS' position in relation to certain service providers "...on the grounds that I don't understand the "bigger picture" or the "complex politics". Martin Morton stated that, on the contrary, he understood the "bigger picture" all too well but was not prepared to collude with abuse. He believed that, in the circumstances, as the Supported Living Development Officer who had raised concerns over a period of time, he should have been involved in discussions at a strategic level; he also said that "the complex politics" should have been made apparent to him.

Comments

- 5.83 [REDACTED] letter of 29 June 2007 gave Martin Morton DASS' formal answer to the issues he had raised in his original grievance dated 18 September 2006. In that letter [REDACTED] stated, in relation to the application of national policy regarding Supported Living Providers, "...I appreciate that it is frustrating that an organisation you feel is abusive continues to be used by the department and it is obvious that you feel strongly that the department should have stopped using them. However, I have to say that you do not appear to have the insight into the legal difficulties involved in stopping using a provider without first making strenuous efforts to work with that provider to make the necessary improvements."

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Findings

- 5.84 Martin Morton acknowledged that, by 29 June 2007, DASS were no longer dealing with the service provider concerned, but he stated that the service provider was still part of his original grievance. He said this because he felt that DASS did not have an exit strategy for ending their working relationship: there was no contract between DASS and service providers - which was one of Martin Morton's major concerns.
- 5.85 Consequently, Martin Morton felt that it wasn't a case of DASS taking decisive action in addressing his concerns over this service provider, and to further emphasise his point, Martin said that his concern was that *"DASS' response to XXX (the service provider) was negligent; they were leaving vulnerable people open to continuing abuse"*.
- 5.86 Clearly, there was a different perspective being applied to the issue of how to deal with service providers who do not meet professional standards of service delivery. [REDACTED] was referring to the need to take appropriate steps, within what he believed was a balanced approach to addressing the issues involved, while Martin Morton felt that his concerns for service users were so important that immediate action was justified. This was the essence of Martin Morton's grievance re. service matters. Action was being taken by DASS but from Martin Morton's perspective it was too slow and, in the meantime, the concerns he had raised continued.
- 5.87 However, I do not find that an open exchange of views, such as this between [REDACTED] and Martin Morton, necessarily indicates bullying behaviour. It may well be that had DASS involved Martin Morton, as the Supported Living Development Officer, in discussions at a strategic level that he would have been aware of "the complex politics" and this may have helped to maintain working relationships. However, this did not happen and there was eventually a breakdown of trust and confidence between the parties.

Conclusion: Allegation 1(H)

- 5.88 Based on my findings I have concluded that Martin Morton was not bullied by being told that he did not understand the bigger picture.

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Allegation 1(I)

By Councillor [REDACTED] alleged comment to members of the Audit and Risk Management Committee on 25 November 2009, that [REDACTED] had said that "... *Martin Morton was a troublemaker and not a good witness*";

Statement

- 5.89 Martin Morton stated that it was the issue of the abuse of power, as detailed in his grievance submission, which led directly to him taking his concerns to the Audit Commission. He said that he did so because he felt that the Council had no intention of investigating his concerns because, to do so, would have exposed serious failings involving gross maladministration and financial mismanagement. He stated that, to ensure such matters were not exposed, senior officers had been involved in a "cover-up" and had sought to discredit himself as part of the process: he claimed, for example, that at the Audit and Risk Management Committee on 25 November 2009, Councillor [REDACTED] told the Committee Members that [REDACTED] had told [REDACTED] (Councillor [REDACTED]) that Martin Morton was a troublemaker and not a good witness.

Comments

- 5.90 I discussed this allegation with Councillor [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:

Councillor [REDACTED]

- 5.91 Councillor [REDACTED] stated that [REDACTED] had no recollection of making any such statement to the members of the Audit and Risk Management Committee (ARMC). [REDACTED] asked if there was a minute of the meeting which recorded such a statement and it was confirmed that the minutes of the Committee meeting on 25 November 2009 do not reflect such a statement.
- 5.92 Councillor [REDACTED] said that [REDACTED] was surprised by any reference to such a phrase as "...*troublemaker and not a good witness*" as these are not words [REDACTED] would use. [REDACTED] also suggested that, if [REDACTED] had made such a statement, it would have been challenged by the Elected Members who heard it. [REDACTED] did not recall being challenged in this way at that particular meeting, or any other meeting of the Committee.

██████████

5.93 I asked ██████████ if ██████████ had made such a comment to Councillor ██████████ and ██████████ stated that to the best of ██████████ knowledge and recollection ██████████ did not say this. ██████████ said ██████████ had no reason to suggest that Martin Morton was a troublemaker and not a good witness. However, ██████████ repeated ██████████ firmly held view that there was a two way breakdown in relationships and this was the first time in more than 30 years ██████████ had encountered such circumstances.

██████████

5.94 ██████████ is the ██████████ ██████████ who attended the meeting of the Audit and Risk Management Committee on 25 November 2009 when Martin Morton claimed Councillor ██████████ made the alleged comment.

5.95 ██████████ indicated that ██████████ had no recollection of such a statement being made. ██████████ stated that ██████████ thought ██████████ would have remembered if it had been said. ██████████ also stated that ██████████ could not say that it had not been said, particularly as there had been a series of meetings which discussed this topic, and it could possibly have been said at a different meeting.

5.96 I asked if Martin Morton could have misheard or misunderstood what was said and ██████████ said that ██████████ could not recall the context of that meeting and ██████████ had, therefore, looked for ██████████ handwritten notes of the meeting, as well as ██████████ notes for all six or seven meetings which had considered this issue before the meeting held on 25 November 2009. So far as the meeting on the 25 November date was concerned, ██████████ stated that *"you would tend to remember such a statement"* and ██████████ would have been surprised if Councillor ██████████ had made such a statement.

5.97 I also asked ██████████ if Councillor ██████████, or anyone else, could have said anything along these lines on any other occasion and he said that that was possible. However, ██████████ also said that there was nothing ██████████ could recall that would be along the same lines. ██████████ emphasised that the issue of DASS' charging policy was being taken very seriously by Elected Members and the alleged statement by Councillor ██████████ said, seemed to be a dismissive remark that did not fit the tone of members' discussions at the meetings. ██████████ reiterated that ██████████ thought ██████████ would have recalled such a comment not least because ██████████ believed that Members were not looking to dismiss Martin Morton's comments.

Findings

- 5.98 This is a serious allegation and it is important to examine it closely. Martin Morton's recollection of what was said by Councillor [REDACTED] on 25 November 2009 is quite different from that of Councillor [REDACTED]. Martin Morton's recollection is also quite different from that of [REDACTED]. Consequently, I discussed this matter with [REDACTED] who, as the [REDACTED] [REDACTED] present at the meeting of ARMC on 25 November 2009, was able to provide an independent account of events at that particular meeting. When I did so, [REDACTED] also could not recall such a statement being made by Councillor [REDACTED].
- 5.99 It is, of course, possible that Martin Morton could have misheard what was said at that meeting; or [REDACTED] could have been mistaken about which particular meeting it was i.e. he could have got the date of the meeting wrong. However, when I discussed this with [REDACTED] [REDACTED] said there was nothing in his personal notes for all six or seven ARMC meetings which had considered this issue before the meeting on 25 November 2009.
- 5.100 In addition, [REDACTED] also said that such an alleged statement would have been out of context with the tone of Elected Members' treatment of Martin Morton's grievance allegations which were being taken very seriously. [REDACTED] was clear that, in such circumstances, [REDACTED] would have expected to recall such a statement, had it been made.
- 5.101 It seems that, on the balance of probabilities, Martin Morton was mistaken in what [REDACTED] believed Councillor [REDACTED] said to ARMC on 25 November 2009.

Conclusion: Allegation 1(I)

- 5.102 I have concluded that Martin Morton's allegation has not been proved.

2 Bullying – Collective behaviour

- 5.103 Bullying – Collective behaviour involves two or more people, often departmental colleagues, who take part in joint or concerted action which undermines or otherwise adversely affects an individual.
- 5.104 Martin Morton has alleged that there was a bullying culture in DASS which has led to some of the personal treatment he has received as shown below:-

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Deliberate isolation by ignoring or excluding someone

Martin Morton's alleged isolation at work from May 2007 as evidenced by:-

Allegation 2(A)

[REDACTED] decision to send Martin Morton home on his return to work in May 2007;

Statement

- 5.105 Martin Morton stated that prior to the Appeals Sub-Committee hearing on 23 May 2007, he returned to work from sickness absence on Friday 4 May 2007. He had heard rumours while away from work that his post may be deleted as part of an organisational restructure. However, on his return he was told by [REDACTED], [REDACTED] [REDACTED], that nothing had been decided and he was sent home so the Department could "*decide what to do with you*". He was told that [REDACTED] was now his [REDACTED] [REDACTED] and on Tuesday 8 May 2007, [REDACTED] gave Martin Morton a Supported Living Development Officer Task List as this post was to continue.

Comments

- 5.106 I discussed this allegation with [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

- 5.107 Bearing in mind that [REDACTED] was not Martin Morton's [REDACTED], I asked him for clarification as to how it had come about that he should see Martin Morton on his return to work on 4 May 2007. He commented that he was broadly aware of the background to Martin Morton's complaints, but otherwise he had been on the periphery of what was going on with Martin Morton.

- 5.108 However, on the 4 May 2007, Martin Morton had turned up back at work unexpectedly after some 8 months absence on sickness leave. [REDACTED] said that Martin Morton had, in fact, telephoned the office on the day before to say he would be back on the following day (Friday). [REDACTED] recalled that Martin Morton's [REDACTED] [REDACTED] was absent on sickness leave, so [REDACTED] was covering [REDACTED] role in [REDACTED] absence. Consequently, [REDACTED] was managing [REDACTED] and [REDACTED] from [REDACTED] division.

5.109 [REDACTED] stated that there was an organisational review going on and, as a consequence, there was no time to consider a full response to Martin Morton's unexpected return at short notice. As a result, [REDACTED] had spoken with the [REDACTED], [REDACTED], and they had agreed to (i) send Martin Morton home until after the bank holiday weekend and (ii) talk to [REDACTED].

5.110 [REDACTED] said that [REDACTED] could not recall saying "... so the Department could decide what to do with you", as claimed by Martin Morton. However, [REDACTED] said there was some consideration of what role the Department wanted Martin Morton's post of Supported Living Development Officer to perform. [REDACTED] was conscious that Martin Morton had been off sick for eight months, so his post had not been active for that length of time and there was a question of whether DASS needed the post or not. [REDACTED] said that this was the issue to settle rather than deciding what to do with Martin Morton as an individual.

[REDACTED]

5.111 When I discussed this matter with [REDACTED] it was in the context of considering [REDACTED] letter of 3 September 2007 to Martin Morton. This detailed the responses [REDACTED] had made to Martin Morton's concerns over the issue of an alleged period of him having no work to do, e.g. (i) the deletion of his post of Supported Living Development Officer; (ii) being sent home on his return to work immediately before the May Day bank holiday; (iii) being given a new task list by [REDACTED]; and (iv) his sense of isolation and exclusion. [REDACTED] commented that by the time of [REDACTED] letter, [REDACTED] [REDACTED] was planning [REDACTED] [REDACTED] from the Council which had been agreed would take effect on [REDACTED] [REDACTED]. Consequently, [REDACTED] didn't continue to be involved in deciding what Martin Morton should do.

[REDACTED]

5.112 When I interviewed [REDACTED] [REDACTED] said that [REDACTED] was not aware of this particular issue or why [REDACTED] had been involved. However, subsequently on reflection, [REDACTED] stated that [REDACTED] did remember that [REDACTED] was involved and that Martin Morton gave very short notice of his return to work and that [REDACTED] asked him to come back at a later date. At that point, Martin Morton's management reporting arrangements had not been resolved.

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Findings

- 5.113 It seems clear that Martin Morton's telephone call on Thursday, 3 May 2007 to say that he would be returning to work on Friday, 4 May 2007 took DASS senior managers by surprise. They had not expected him to return to work after his long sickness absence on the Friday before the May Day Bank Holiday.
- 5.114 In addition to this, Martin Morton's [REDACTED] was absent and it appears that due to the departmental restructure, which was ongoing, there was no line manager in place for Martin Morton: hence, [REDACTED] had to fill the gap and see Martin Morton on his return.
- 5.115 However, due to the lack of clarity over the position of Martin Morton's post and his reporting arrangements at that point i.e. immediately prior to the Bank Holiday, [REDACTED] felt [REDACTED] had to seek guidance from [REDACTED] and they decided they needed some time in order to sort things out; hence [REDACTED] reference to the need to talk to [REDACTED] and in the meantime asking Martin Morton to go home and return after the Bank Holiday.
- 5.116 On Martin Morton's return following the Bank Holiday on Tuesday, 8 May 2007, [REDACTED]
[REDACTED]
[REDACTED]
- 5.117 Whether [REDACTED] said "... so the department could decide what to do with you", as quoted by Martin Morton is unclear: he does not recall it. However, I believe the question to consider here is whether DASS acted reasonably in asking Martin Morton to go home and return after the Bank Holiday. The combination of factors influencing this decision is relevant i.e. given that (i) Martin Morton's [REDACTED] was absent; (ii) the departmental restructure was still ongoing and creating uncertainty over Martin Morton's post and his reporting arrangements; and (iii) Martin Morton had given very short notice of his return, it is not surprising that, following consultation with [REDACTED] took the decision he did.
- 5.118 However, after eight months absence due to sickness, during which time Martin Morton has stated that he had little or no contact from DASS, it is a decision which inevitably further contributed to the deteriorating working relationship between Martin Morton and his DASS senior managers.

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5.119 It is also pertinent to consider the impact of Martin Morton's actions in wishing to return to work at such short notice. It seems clear that the absence of any normal contact or dialogue during his sickness absence may have influenced his thinking about his return to work but, in the context of such deteriorating working relationships at the time, the actions of both sides were under suspicion and DASS senior managers were very likely to be sceptical of Martin Morton's motives. In the light of this mutual scepticism and mistrust, the short notice given of his return to work would, no doubt, have also contributed to a deteriorating situation.

5.120 Given these circumstances I do not think [REDACTED] decision to ask Martin Morton to go home and return after the Bank Holiday was unreasonable.

Conclusion: Allegation 2(A)

5.121 Based on my findings, while this exchange contributed further to the deteriorating working relationships between Martin Morton and his senior managers, in these particular circumstances, I do not believe that Martin Morton was bullied as he has claimed.

Allegation 2(B)

DASS discussions/correspondence with Martin Morton in May/June 2007, when he alleges he was given an instruction by [REDACTED] not to attend Adult Protection strategy meetings, resulting in his continuing professional exclusion and isolation;

Statement

5.122 Martin Morton stated that on 14 June 2007, he approached [REDACTED] to lodge a complaint about being ostracised and excluded from general office activity. Shortly after this discussion he attended an Adult Protection Strategy meeting and he claimed at that meeting that a service user was being financially abused by a service provider. As a consequence of making this claim, Martin Morton had been told by [REDACTED] not to go to any more Adult Protection Strategy meetings. He stated that this was recorded as a "management instruction" to him.

5.123 In his memorandum to [REDACTED] on 18 June 2007 Martin Morton stated "...my main area of contention would be that I am not aware of any other member of staff who is subject to such exclusion and discrimination. I particularly

object to the fact that [REDACTED] ([REDACTED] [REDACTED] [REDACTED]) has been requested to contact yourself if potentially I am required to contribute to any future Adult Protection meetings. Again I would ask whether any other member of staff is subject to such conditions".

Comments

- 5.124 I discussed this allegation with [REDACTED] and [REDACTED]. Details are shown below:
- [REDACTED]
- 5.125 [REDACTED] indicated that [REDACTED] recall was that it had been brought to [REDACTED] attention that Martin Morton had been attending Adult Protection Strategy (APS) meetings and that colleagues had questioned his attendance at such meetings. [REDACTED] explained that as the Supported Living Development Officer, Martin's principle role was to develop the Council's Supported Living service, whereas APS meetings were focussed on vulnerable individual service users and measures which may need to be taken to protect them.
- 5.126 [REDACTED] stated that [REDACTED] had not been aware that Martin Morton had attended APS meetings until other senior colleagues drew this to [REDACTED] attention. [REDACTED] suggested that Martin Morton's presence was not required at such meetings and colleagues had queried why he was there. [REDACTED] felt that at Martin's level of seniority he should be perfectly able to make the right decisions about how he spent his time and, consequently, [REDACTED] was challenging Martin about why he felt he should attend APS meetings when it was not necessary for him to do so.
- 5.127 [REDACTED] acknowledged Martin Morton's point that he [Martin] was an "alerter" in adult protection terms, but [REDACTED] stated that there was no requirement for the alerter to continue to take part in APS meetings: this was the advice [REDACTED] had received from [REDACTED], who was the [REDACTED] [REDACTED] and [REDACTED] thought that to seek her advice was a very sensible thing to do.
- 5.128 [REDACTED] also stated that when Martin Morton complained that other staff were not subject to such restrictions, [REDACTED] had disagreed. [REDACTED] suggested that managers have the right to determine such matters for their staff and [REDACTED] also suggested that, in this case, there was also an element of "protection for Martin". There had been a recent history of one particular service provider making

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complaints, on two occasions, about Martin Morton. The complaints had been investigated and were unfounded. However, by not attending APS meetings, Martin Morton would avoid coming into contact with this service provider when [REDACTED] felt there was no need for him to do so and, therefore, [REDACTED] felt this decision offered Martin Morton protection from further unsubstantiated complaints.

5.129 On this point Martin Morton had wanted to refute the suggestion that he was being prevented from participating in Adult Protection meetings for his own "protection" and had been unhappy with [REDACTED] insistence on him not attending APS meetings, but [REDACTED] had not changed [REDACTED] view. [REDACTED] said that [REDACTED] had talked to Martin Morton about taking a more strategic interpretation of his role which specifically did not involve working with individual service users. [REDACTED] had suggested to Martin that he could raise individual issues and pass them on and then get feedback in ways other than taking part in the APS discussions directly.

5.130 [REDACTED] also felt that this was the best way of dealing with any threats such as those received from the particular service provider mentioned. [REDACTED] reflected that there was a "lot going on" in the Supported Living service at that time with a range of organisations involved, including the police, so consequently this was a big issue and [REDACTED] felt that [REDACTED] and DASS needed to protect Martin Morton.

5.131 [REDACTED] also stated that [REDACTED] had not had to issue Martin Morton with a formal management instruction not to attend APS meetings and that [REDACTED] had indicated to Martin Morton that [REDACTED] would prefer to reach an informal resolution regarding this issue. In [REDACTED] letter of 19 June 2007 [REDACTED] stated *"...In such circumstances I would normally advise a member of staff not to attend a meeting on the basis that it is not within their remit and for their own protection. I am minded however that in the current circumstances should you not follow my advice I may be left with no option other than to issue you with a management instruction that you are not to attend the follow up meeting on June 22nd".*

- 5.132 [REDACTED] confirmed that [REDACTED] recalled the conversation with [REDACTED]. [REDACTED] stated that [REDACTED] had said [REDACTED] did not want Martin Morton to have any involvement with APS meetings. [REDACTED] explained that [REDACTED] wanted to keep Martin Morton away from the safeguarding arena because his presence at APS meetings wasn't helping the situation i.e. Martin Morton was continuing to raise concerns which were not being addressed. [REDACTED] reiterated [REDACTED] comment that [REDACTED] thought Martin Morton was "seen as a pain by senior management".
- 5.133 [REDACTED] stated that [REDACTED] could not recall giving the advice [REDACTED] had attributed to [REDACTED]. [REDACTED] explained that they don't always have alerters present at APS meetings but, also, they don't exclude them either. [REDACTED] went on to say that [REDACTED] had asked [REDACTED] how [REDACTED] could stop Martin Morton from attending APS meetings and [REDACTED] had told [REDACTED] that the attendance at the meeting of the alerter depended on the nature of each case.
- 5.134 [REDACTED] also stated that as the Supported Living Development Officer Martin Morton had a role to play in APS meetings when they were considering any cases of service users who were in the supported living service, or if Martin Morton had a personal involvement in an individual case. [REDACTED] said that, in other words, as SLDO Martin Morton had a reason to be there. In this capacity Martin Morton would have a standing invitation to attend for any supported living issues which may be discussed from time to time.
- 5.135 [REDACTED] said [REDACTED] was not aware of any complaints by any managers about Martin Morton's presence at APS meetings, although these meetings were chaired by senior officers and someone could have objected if Martin had raised a particularly difficult issue.
- 5.136 When I asked [REDACTED] whether [REDACTED] had been asked to let [REDACTED] know whenever Martin Morton was potentially required to contribute to any future Adult Protection meetings, [REDACTED] stated that [REDACTED] could not remember being asked to do so. [REDACTED] also stated that [REDACTED] could not remember if [REDACTED] had noticed any "drop-off" in Martin Morton's attendance at APS meetings after June 2007.
- 5.137 I asked if service providers were always present at APS meetings and [REDACTED] indicated that service providers attended on a selective basis and would not be invited to the

initial meeting where any safeguarding concerns involving that particular service provider were being discussed.

Findings

- 5.138 Clearly there was a difference of opinion between [REDACTED] and Martin Morton on Martin's role as Supported Living Development Officer. [REDACTED] maintained that Martin Morton's job was to take a more strategic perspective in developing the supported living service rather than deal with individual service users needs, which is what APS meetings are about. On the other hand, Martin Morton felt that, as someone with responsibility for the development of the supporting living service, he could not ignore any individual safeguarding issues which became apparent to him. Hence his stance as an alerter on such safeguarding issues. Indeed, Martin Morton took advice from [REDACTED] on how to progress his safeguarding concerns within DASS. The question I have asked here is not only about whether Martin Morton's role included the need to attend APS meetings, but also how DASS addressed safeguarding issues across the department. However, such safeguarding arrangements are not the concern of this investigation.
- 5.139 Having examined the job description for the post of Supported Living Development Officer, it seems clear that the post has a clear strategic role whose function is to put in place a framework for successful delivery of the supported living service. The supplementary question is whether there is a need for the postholder to attend APS meetings. This is where the disagreement between [REDACTED] and Martin Morton arose. Martin Morton felt it was his duty and responsibility to make a contribution on any supported living safeguarding issues, including reporting and following up on such individual cases as he came across. However, senior managers, as represented by [REDACTED] stated view, did not believe that this was the case.
- 5.140 When I spoke to [REDACTED] [REDACTED] made it clear that in [REDACTED] view as the [REDACTED], as the Supported Living Development Officer Martin Morton had a role to play in APS meetings when they were considering any cases of service users who were in the supported living service. [REDACTED] also made it clear that he had a part to play, in the same way that other colleagues did, in reporting safeguarding concerns in which he had a personal involvement.

5.141 [REDACTED] confirmed that [REDACTED] had sought [REDACTED] advice on this issue and [REDACTED] could not recall the advice [REDACTED] attributed to [REDACTED] i.e. that there was no requirement for the alerter to continue to take part in APS meetings. Of course, in safeguarding cases involving service users from the supported living service, Martin Morton's post had more than an alerter's interest in attending APS meetings.

5.142 I also considered Martin Morton's claim that he was given a management instruction by [REDACTED] not to attend APS meetings. [REDACTED] memorandum of 19 June 2007 indicates that [REDACTED] was giving Martin Morton very firm advice not to attend a follow-up APS meeting on 22 June 2007, because it was not within his remit and for his own protection. But [REDACTED] also made it clear that if Martin Morton chose to ignore such advice, [REDACTED] *"... may be left with no option other than to issue you with a management instruction that you are not to attend the follow-up meeting on June 22..."* This leaves little room for any misunderstanding of [REDACTED] intention.

5.143 I have also considered Martin Morton's job description on this issue and a copy is included at Appendix 4. It is silent on the subject of safeguarding processes and attendance at APS meetings. This, of course, leaves the matter open to interpretation. In my view, based on Martin Morton's job description, and having discussed the matter with [REDACTED] I am surprised that the reasons given by [REDACTED] for Martin Morton not to attend APS meetings are (i) it is not within his remit; and (ii) it is for his own protection. On the first point, there is room for discussion and such a discussion should be set not only in the context of the strategic responsibility of the post for all things 'supported living' e.g. *"to establish a framework of service development and market management which ensures that there is a diverse pool of competent providers with a focus on continuous quality improvement and best value"* [Job description: para. 7]; but also in the context of the department's professional safeguarding arrangements and the contribution the post of Supported Living Development Officer is expected to make to them.

5.144 In addition, I do not share [REDACTED] view that to prevent Martin Morton from attending APS meetings was a positive step for his protection. If a service provider makes two complaints against an employee which are both unfounded, it is not good practice to take that employee out of the situation: such a decision can be interpreted in exactly the opposite way. It seems to me that it is better to leave the

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employee in place and confront any further allegations which may be made and by doing so not allow potential unfounded allegations to constrain either the department's service delivery arrangements or the employee's effectiveness or credibility.

5.145 In any organisational setting if there is a reasonable, objectively based difference of opinion between colleagues about professional or organisational matters such as who should attend what meetings, it is normally the view of the senior manager which should be followed. However, based on my findings, I believe DASS may have had other reasons for preventing Martin Morton from attending APS meetings. Martin Morton stated that after he attended an APS meeting and claimed that a service user had been financially abused by a service provider, he was told by [REDACTED] not to attend any more meetings. [REDACTED] approached [REDACTED] in planning this decision and asked for [REDACTED] advice as to how he could stop Martin Morton from attending APS meetings because [REDACTED] wanted to keep Martin away from the safeguarding arena, as his presence at APS meetings wasn't helping the situation i.e. he was continuing to raise concerns which were not being addressed. I believe these were more likely to be the reasons for [REDACTED] decision.

5.146 It also seems to me that in seeking the advice of [REDACTED] in reaching this decision, [REDACTED] made it clear that his judgement was based on [REDACTED] consideration of Martin Morton as an individual and what he was saying at APS meetings i.e. it was a subjective judgement based on personal reasons and not as [REDACTED] stated in his memo of 19 June 2007, one based on the remit of the post of Supported Living Development Officer i.e. the duties of the post not the postholder who occupied it. In my view this is clearly inappropriate behaviour.

Conclusion: Allegation 2(B)

5.147 Based on my findings I have concluded that [REDACTED] decision that Martin Morton should not attend Adult Protection strategy meetings was inappropriate behaviour which resulted in Martin Morton's continuing professional exclusion and isolation.

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Allegation 2(C)

By being excluded from SP Corporate Strategy and Learning Disabilities Board Meetings;

Statement

- 5.148 Martin Morton has claimed that he was systematically excluded from attending SP Core Strategy Development Group, Learning Disabilities Partnership Board (except for a guest appearance to evidence what work he was doing in the Valuing People Housing Group) or planning days.

Comments

- 5.149 I discussed this allegation with [REDACTED]. Details are shown below:

[REDACTED]

- 5.150 [REDACTED] response to this allegation has already been mentioned when discussing Allegation 1(F). In that discussion [REDACTED] pointed out that the SP Core Strategy Group was led by Wirral's Housing Department and attended by the Probation Service and NHS as well as Council officers. DASS' place at the meetings was initially taken by Martin Morton's [REDACTED], who was [REDACTED] at that time. [REDACTED] indicated that later the Joint Commissioning Managers (e.g. [REDACTED]) attended on behalf of both Health and Social Services.

- 5.151 So far as the LDP Board meetings were concerned, [REDACTED] indicated that the Housing Department had a place at these meetings and there was no reason for Martin Morton to attend. Consequently, [REDACTED] felt that it wasn't a case of specifically excluding Martin Morton from attending it. [REDACTED] also stated that there was, in fact, a Disabilities Modernisation Team which Martin should have attended but, [REDACTED] stated, he often did not do so.

Findings

- 5.152 Martin Morton has claimed that he was systematically excluded from the SP Core Strategy Group and the Learning Disabilities Partnership Board. In other words, he believed that as he was the Supported Living Development Officer with a strategic rôle in developing the supported living service, he should have been in attendance. On the face of it, this seems to be a not unreasonable view to take. However, [REDACTED]

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██████ says that the SP Core Strategy Group was led not by DASS but by the Housing Department and attended by partners such as the Probation Service and NHS. The DASS place was taken by Martin Morton's ██████ i.e. the tier of management above Martin Morton's post. Later, the Joint Commissioning Managers attended on behalf of both Health and Social Services. This also seems to be a perfectly reasonable arrangement. It is worth noting that, in these later arrangements, the management tier representing DASS continued to be the tier above Martin Morton's post.

5.153 So far as the LDP Board was concerned, ██████ took the view that because the Housing department attended, there was no reason for Martin Morton to attend. In other words, Martin Morton wasn't excluded: it was not a meeting he was either required or needed to attend.

5.154 It seems clear that DASS' view, as represented by ██████, as to who should attend both the SP Core Strategy Group and the LDP Board, was based on a judgement of which management post was most appropriate to attend. This was a judgement based on the duties of the post not the postholder who occupied it. In other words, it was a judgement based on organisational reasons and not one based on personal reasons. In any organisation, it is a management judgement as to which are the best arrangements for such representational matters i.e. which posts and postholder should attend which meetings. Also, it is usually the case that the meetings a postholder is expected to attend are included in the job description for the post. However, there is no such inclusion in the job description for Martin Morton's post i.e. his job description is silent on this point.

5.155 In this particular case, ██████ judgement was that Martin Morton's ██████ should attend SP Core Strategy Group and that later it should be the Joint Commissioning Managers and that housing issues were adequately covered by the housing department representative who attended the LDP Board.

5.156 As mentioned under Allegation 2(B) in any organisational setting if there is a reasonable, objectively based difference of opinion between colleagues about professional or organisational matters such as who should attend what meetings, it is the view of the senior manager which should be followed.

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Conclusion: Allegation 2(C)

- 5.157 I have concluded that Martin Morton was not bullied by being excluded from SP Core Strategy and Learning Disabilities Board Meetings as he has claimed.

Allegation 2(D)

DASS discussions/correspondence with Martin Morton between May – September 2007 re. DASS' alleged failure to allocate work to him, resulting in his further isolation and exclusion from the department e.g. (i) being left in an office on his own with little or no work to do; and (ii) being left with little work to do while his [REDACTED] was on holiday;

Statement

- 5.158 Martin Morton stated that on his return in September 2007 he had immediate concerns about the lack of work for him to do, so he had discussions with [REDACTED] about his role. They discussed Martin Morton's concerns over being left on his own and how he felt victimised. [REDACTED] confirmed [REDACTED] response in a letter dated 3 September 2007.

- 5.159 Martin Morton also stated that when [REDACTED] went on holiday for 3 weeks in September 2007, although he was now in an open office, he (Martin) was left with little or no work to do and he had to ask colleagues if they had any work for him. He emailed [REDACTED], [REDACTED], [REDACTED], Older People, to ask for work in [REDACTED] absence. This problem of having no work to do had been created, [REDACTED] suggested, by Martin's lack of involvement in the Supported Living Development role, since DASS had denied him access to relevant files and told him not to attend relevant meetings. He stated that his role as Supported Living Development Officer was a strategic one, rather than an operational one.

Comments

- 5.160 I discussed this allegation with [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.161 In his letter to [REDACTED], dated 20 July 2007, Martin Morton had stated "*The period between May 8th - July 20th 2007 has been the worst of my professional life. The isolation and exclusion I have experienced has reinforced my sense that there is no place (and indeed there never was a place) for me in the new structure. I have good reason to believe that this is an act of deliberate victimisation...*". [REDACTED]

[REDACTED] stated that initially Martin Morton was sharing a room with [REDACTED], which was on the ground floor at Westminster House. However, after [REDACTED] had moved office, [REDACTED] suggested that Martin Morton should move to a large open plan office on the 3rd floor, and he did so on his return from annual leave in September 2007. He was based there until he left the Council in April 2008.

5.162 When I asked [REDACTED] if [REDACTED] was aware that Martin Morton had emailed [REDACTED] asking for work [REDACTED] stated that he asked [REDACTED] to "keep an eye" on Martin, from a constructive point of view. [REDACTED] also indicated that [REDACTED] emailed Martin Morton on 11 September 2007 asking him to gather data on the number of vacancies in supported living schemes and whether they were SP funded, together with the actual and potential number of vacant properties within the supporting living service. [REDACTED] asked for this information to be available on his return to work on 1 October 2007.

5.163 When I asked what work Martin Morton had had to do in the period from May 2007 [REDACTED] stated that there had been discussions about various housing schemes. [REDACTED] said that some properties needed to be re-evaluated and/or disposed of and Martin Morton had meetings with colleagues on such housing issues. Martin Morton had got on with this work and produced a housing needs survey, but some data was lost. He had also produced an options appraisal for Fellowship House, which [REDACTED] felt was "a very thoughtful piece of work". There had also been discussions about extending Martin Morton's role into areas wider than learning disabilities e.g. services for older people and mental health. [REDACTED] suggested that this was not a change of role for Martin Morton, it was more a variation which would not involve the role of a social worker. However, Martin Morton was uncertain of his knowledge base in such matters and [REDACTED] suggested that he (Martin Morton) had found this difficult.

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5.164 [REDACTED] also stated that [REDACTED] felt that all this was full-time work but Martin had disagreed. In fact, [REDACTED] said, when he sent Martin Morton the new Task List, [REDACTED] suggested that Martin needed to allow thinking time as well as actual working time, in getting this Task List completed. [REDACTED] also stated that [REDACTED] asked Martin Morton to produce a work programme which they discussed in their regular supervision sessions.

5.165 When asked if [REDACTED] had discussed these managerial issues with [REDACTED] senior colleagues, [REDACTED] indicated that [REDACTED] had done so. [REDACTED] said [REDACTED] had agreed a way forward with [REDACTED] over particular issues. [REDACTED] also stated that [REDACTED] management style was such that if [REDACTED] wanted something doing, the staff concerned would be aware of it, because [REDACTED] style was based on consensus.

5.166 [REDACTED] went on to say that [REDACTED] had the impression throughout these discussions that Martin Morton had a feeling there was a "bigger" organisational issue going on. [REDACTED] suggested that if [REDACTED] did not manage Martin Morton as Martin had wanted, it was not because [REDACTED] management style was lacking, it was because this was now the DASS view of the situation.

[REDACTED]

5.167 [REDACTED] recognised that Martin Morton was a self-starter and, previously, had been left to his own devices and "off he would go", so [REDACTED] did not understand his comments about being isolated and excluded. [REDACTED] said that the new Task List provided via [REDACTED] was an attempt to give him some boundaries and prevent others e.g. a particular service provider, "tittle-tattling" about him. In that sense, it was a means of keeping Martin Morton safe and away from danger. In addition, [REDACTED] suggested that the Task List encapsulated the work Martin Morton was intended to do; there was, [REDACTED] said, lots of work for him to do. There were some big projects e.g. Lighthouse Road, Hoylelake and Fellowship House and there were options to be explored. Consequently, [REDACTED] felt that Martin Morton was not isolated and [REDACTED] was not aware why he would claim that the Task List bore no resemblance to his job description. [REDACTED] went on to say that [REDACTED] recalled that when Martin returned in May 2007 he had been in his own small quiet office and perhaps he had felt isolated for a period. However, this had been sorted when he was moved to a big noisy office elsewhere.

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5.168 I asked [REDACTED], in the light of these complaints from Martin Morton and the deterioration in working relationships, whether any welfare support had been offered to Martin Morton (i.e. possibly from an HR colleague who was not involved in Martin's grievance but who could provide general advice and support as required). [REDACTED] suggested that Martin's grievance had gone to appeal on 2 July 2007 and [REDACTED] letter to [REDACTED] on 20 July 2007 was, perhaps, one of the consequences of that appeal hearing. [REDACTED] thought that [REDACTED] may have offered support and Martin had declined it.

5.169 When I spoke to [REDACTED] on this point [REDACTED] confirmed that [REDACTED] had not considered this approach because [REDACTED] assumed it was not available. Instead, [REDACTED] was aware that Martin Morton had been to see the Occupational Health Unit and had been referred to the Council's confidential counselling service.

5.170 [REDACTED] also stated that after the 2 July 2007, [REDACTED] had as little contact with Martin Morton as possible. [REDACTED] felt that Martin Morton's statements had twisted and turned everything [REDACTED] said and, therefore, [REDACTED] wanted to keep out of his way. [REDACTED] was cordial towards him when they did need to communicate.

5.171 Separately, I asked [REDACTED] about Martin Morton claiming he had no work to do when [REDACTED] was on annual leave in September 2007 and, consequently, Martin had asked other colleagues (e.g. [REDACTED]) for work to do. [REDACTED] said [REDACTED] was not aware of this; on the contrary, [REDACTED] reiterated that Martin had a Task List and there was plenty for him to do.

[REDACTED]

5.172 As mentioned previously when discussing Allegation 2(A), [REDACTED] commented that by the time of [REDACTED] letter of 3 September 2007 [REDACTED] was planning his early retirement from the Council. Consequently, [REDACTED] didn't continue to be involved in deciding what Martin should do. [REDACTED] explained that [REDACTED] had some supervision discussions with [REDACTED] about the importance of maintaining good communications with Martin Morton. [REDACTED] said the introduction of a Task List was an attempt to ensure this happened.

[REDACTED]

5.173 When I asked [REDACTED] whether Martin Morton had been isolated with no work to do, [REDACTED] said not to his knowledge. [REDACTED] said Martin Morton had been moved away from his own job as

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Supported Living Development Officer with structures and processes around it, into something which was more loose and flexible. [REDACTED] recalled that this may have been the basis of Martin's discussions with [REDACTED] and [REDACTED] on 28 November 2007.

[REDACTED]

- 5.174 [REDACTED] stated that in [REDACTED] view, Martin Morton was not isolated at work. [REDACTED] was aware that [REDACTED] was in regular discussions with Martin Morton over work matters and, although [REDACTED] was not aware of the details of those discussions, [REDACTED] recalled that such claims re: a lack of work had not been raised at the 20 February meeting with [REDACTED] which, in due course, had resulted in Martin Morton signing a Compromise Agreement prior to his leaving the Council in April 2008.
- [REDACTED]

- 5.175 [REDACTED] confirmed that [REDACTED] had no involvement in Martin Morton's grievance, other than receiving the email referred to. [REDACTED] said that [REDACTED] had, at one point, offered Martin a secondment to an Assistant Technology post, which would have involved him in a different area of work, but he had declined the offer.

- 5.176 So far as the context prior to Martin Morton's email was concerned, [REDACTED] recalled that [REDACTED] had a meeting with Martin Morton and asked him to attend a couple of conferences on her behalf e.g. Equity Release for Older People, and prepare an options paper for her to consider. [REDACTED] had discussed a couple of other things with him, but could not remember what these were.

Findings

- 5.177 There is clearly a difference of opinion over Martin Morton's workload from May 2007 when he returned from a long period of sickness absence. [REDACTED] produced a new job Task List, a copy of which is included at Appendix 5. This Task List is what it suggests: a list of tasks which needed to be completed by the Supported Living Development Officer whose role was stated to be "*central to the accommodation component of each commissioning strategy*". It specified a number of developments in work within the Learning Disability; Mental Health and Older People services. These were part of the functions of the new Commissioning Health and Wellbeing Division of the Department which was aimed at bringing together a number of functions which would ensure that the promotion of independence and maintenance of

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health was uppermost in further developments for service users.

5.178 From my examination of the Task List, it appears to me that it reflected approximately 50 per cent of Martin Morton's existing duties while introducing new additions some of which, it appears, required a contribution at a lower level of responsibility. The Task List also made clear that the development of supported living would not include involvement with service users. It also made clear that any issues about the quality of service providers would be dealt with via the contracts section and care management. Consequently the Task List was seen by DASS senior managers as part of the immediate workplan for the 'new' post of Supported Living Development Officer, as envisaged in the new division established by the departmental restructure. Direct line management arrangements were still under discussion because *"the division is still in formation and not all post holders have been appointed"*.

5.179 In his letter to [REDACTED] of 20 July 2007, Martin Morton stated that this Task List bears *"little resemblance to my job description or indeed any meaningful short term work tasks... I have subsequently discussed a new job description with yourself but I still do not have a job description..."* The new job description, when compared with the existing job description, appears to retain approximately 50 per cent of the same content, as expressed in terms of duties and responsibilities. In addition, it extended the width of the post by bringing within its scope all service users in the new Health, Wellbeing and Commissioning Division of DASS. However, this new job description never came into practice before Martin Morton left the Council in April 2008. This is discussed later under Allegation 3 (C).

5.180 [REDACTED] stated that Martin Morton's letter of 20 July 2007 was perhaps a consequence of his appeal on 2 July 2007. [REDACTED] also stated that the Task List encapsulated the work Martin Morton was intended to do: [REDACTED] said there were some big projects and options to be explored, so there was lots for Martin to do.

5.181 Bearing in mind these comments, and also [REDACTED] stance on Martin Morton not attending APS meetings, it seems that DASS were seeking to focus Martin Morton's efforts so that he spent time on issues which the senior managers in the department felt were important, rather than issues which Martin Morton felt were important.

- 5.182 [REDACTED] said that [REDACTED] had discussed his approach to managing Martin Morton with [REDACTED] senior colleagues and had agreed a way forward with [REDACTED]. So it seems this approach to Martin Morton's workload was a concerted effort by DASS senior managers to gain control of the situation so far as Martin Morton was concerned. [REDACTED] also made it clear that Martin Morton was suspicious of senior managers' actions i.e. [REDACTED] had the impression that Martin Morton thought there was a 'bigger' organisational issue going on. Given the deteriorating working relationship and the degree of mistrust between the parties, this is not surprising. [REDACTED] acknowledged that Martin Morton may not have liked what was happening on this point, but it was taking place because *"it was...now the DASS view of the situation"*
- 5.183 On this point, [REDACTED] said that by the time of [REDACTED] letter of 3 September 2007, [REDACTED] didn't continue to be involved in deciding what Martin Morton should do: which presumably means that prior to this date [REDACTED] was involved in deciding what Martin Morton should do.
- 5.184 [REDACTED] did not have a detailed involvement in Martin Morton's claims regarding no work. These claims did not get raised at the subsequent formal grievance hearing on 20 February 2008, as [REDACTED] says, however, the reasons for this are explored under Allegation 3 (D).
- 5.185 Similarly, [REDACTED] view was limited because [REDACTED] had no involvement in Martin Morton's grievance other than receiving the email referred to.
- 5.186 On the question of welfare support for Martin Morton via an HR officer, it is clear this fell by the wayside. [REDACTED] said that [REDACTED] thought [REDACTED] had offered it and Martin Morton had declined. However, [REDACTED] said [REDACTED] had not considered this because [REDACTED] assumed it was not available. Consequently the opportunity to provide welfare support via an HR colleague who could have helped reduce Martin Morton's sense of isolation and exclusion and thereby contribute to better working relationships was not taken.
- 5.187 Instead, it seems that we have a situation where there is an agreed departmental approach to managing Martin Morton and the issues related to his work which the [REDACTED] is no longer involved with. Not only that, the [REDACTED] [REDACTED], [REDACTED], was keeping out of Martin Morton's way: in other words [REDACTED] minimised [REDACTED] contact with him and kept [REDACTED] distance. It was left to [REDACTED] to implement the plan because this was now the DASS view of the situation. Clearly,

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as much as was possible, Martin Morton was being kept at arms length.

5.188 On the question of Martin Morton having little or no work to do while [REDACTED] was on holiday, [REDACTED] produced his email of 11 September 2007 as an example of what [REDACTED] wanted Martin Morton to do while [REDACTED] was away. Martin Morton stated that he did not recall this piece of work but *"... this was an administrative task and I'm sure I would have been able to complete this task... - 1 side of A4 tops".*

5.189 In considering this issue I have read [REDACTED] email, an extract of which says:-

"Over the next week or so can you ascertain for me:

- Numbers of vacancies in all block purchased LD supported living services funded by DASS or PCT...*
- Numbers of vacancies in all DASS Supported Living Schemes...*
- Any other vacancies we are aware of...*
- Try and indicate which of them are SP funded*
- Actual and potential...vacant properties that we have an option on or have used...*

...(I) would appreciate it if this is available first week in October, I'm back on the 1st. Trying to do a quick (and dirty piece of work) to map out where vacancies are, to either reduce/stop payments or to get them filled asap".

It would appear that [REDACTED] didn't think this was a piece of work which would occupy Martin Morton's time for all three weeks while [REDACTED] was away.

5.190 The issue here is whether there was a failure by DASS to allocate work to Martin Morton in the period from May 2007, which resulted in his isolation and exclusion from the department, and whether this was an act of deliberate victimisation, as he claims. It is clear that Martin Morton had work to do. First, he had completed a Housing Needs survey and an Options Appraisal for Fellowship House which [REDACTED] felt was *"a very thoughtful piece of work"*; he also had the new job Task List from [REDACTED] which was provided as an outcome from the departmental restructure; and there was the work indicated in [REDACTED] email of 11 September 2007. However, as a 'self-starter' Martin Morton found this work did not fill his time even allowing for thinking time as [REDACTED] had suggested. Hence, his approach to other colleagues such as [REDACTED].

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- 5.191 It is also worth noting that the aftermath of Martin Morton's grievance appeal on 2 July 2007 seems to have contributed to a further decline in Martin Morton's morale and his working relationships, while at the same time increasing his sense of isolation.
- 5.192 Consequently, while Martin Morton was allocated some work, it seems to me that this was reduced in scope, level of responsibility and demands, for some of the duties required, when compared with previously. It also seems that this was a calculated part of senior managers' approach to managing him i.e. (i) non attendance at APS meetings; (ii) a Task List which retained some strategic content but also included a significant operational element : in other words, a reduction in the level of contribution required from the post although potentially this was across all service user groups; (iii) a draft new job description which similarly retained some of the same duties and responsibilities, but which also introduced new ones at a lower level of contribution i.e. "... to assist/support..." rather than lead; and (iv) a senior management approach based on only minimal and necessary contact with him. If Martin Morton had lots to do it seems nobody was monitoring his output and asking him why he wasn't doing it.
- 5.193 In considering a balanced approach to this matter, it is also important to note Martin Morton's contribution to this situation. It has been said that Martin Morton was a good manager who was very person-centred and he put service issues first. However, it has also been said that there was an underlying query about Martin Morton spending time on the issues which he wished to pursue at the expense of the issues the organisation required him to spend time on. Clearly no organisation can afford to run in such a way. Hence, [REDACTED] reference to the Task List needing to provide boundaries. Martin Morton's passion for putting service issues first appears to have had its clear consequences in this case.
- 5.194 Overall, I have found that while DASS did not fail to provide any work at all for Martin Morton, the work it did provide and the way in which the changes were introduced and managed, detrimentally affected him. However, I do not believe this was due to an intention to victimise Martin Morton. Rather, I take the view that it was more a case of some senior managers not dealing well with the issues and circumstances surrounding Martin Morton and this led to an inappropriate approach to managing him. I believe there has been an inability to manage a situation which was increasingly getting out of control.

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Conclusion: Allegation 2(D)

- 5.195 I have concluded that while DASS did not fail to allocate work to Martin Morton, the work it did provide and the way in which the changes were introduced and managed had a detrimental effect on him resulting in his further isolation and exclusion from the department. However, I do not believe that this was due to an intention to victimise him.

Allegation 2(E)

[REDACTED] decision not to intervene when requested to do so by Martin Morton in November 2007, in discussions between himself and [REDACTED], re: the shredding of documents relating to Martin Morton's file;

Statement

- 5.196 Martin Morton stated that [REDACTED] attempts to keep him at arms length extended to failing to intervene when Martin Morton informed [REDACTED] that [REDACTED] had shredded documents from his personnel file. [REDACTED] said [REDACTED] declared it to be a "prima facie" case of asking for something that no longer existed.

Comments

- 5.197 I discussed this allegation with [REDACTED]. Details are shown below:

- [REDACTED]
- 5.198 [REDACTED] stated that this matter related to documents which were part of Martin Morton's original grievance and, consequently, it was something which had already happened and the documents were, [REDACTED] understood, no longer available. [REDACTED] had been contacted by Martin Morton and asked to find the documents again but, of course, was unable to do so. I asked [REDACTED] whether [REDACTED] thought it had been appropriate to shred the documents and [REDACTED] stated that when [REDACTED] spoke to [REDACTED] was told that no documents were available. [REDACTED] did not pursue the matter any further.

Findings

- 5.199 This exchange between [REDACTED] and Martin Morton occurred in November 2007 shortly after [REDACTED] became the [REDACTED]. Martin Morton wanted to find the documents which had been shredded. However, the documents he was referring to were shredded in October

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2007 so they were no longer available. [REDACTED] response was accurate. The question of whether it was appropriate for [REDACTED] to have shredded the documents was not pursued by [REDACTED].

Conclusion: Allegation 2(E)

- 5.200 I have concluded that Martin Morton was not bullied as he has claimed.

Withholding information or removing areas of responsibility without justification

Allegation 2(F)

By the alleged deletion of Martin Morton's post of Supported Living Development Officer and the provision of a new job Task List in May 2007;

Statement

- 5.201 Martin Morton complained that while he had been absent on sickness leave he had heard rumours about his post being deleted. He claimed that when he returned in May 2007, his concerns were not helped by him not having a return to work interview with [REDACTED] who was his [REDACTED]. He also stated that when he met with [REDACTED] he had issued him (Martin Morton) a job Task List as his post was to continue.

- 5.202 Martin Morton wrote to [REDACTED] on 20 July 2007 seeking clarification about discussions held in management meetings concerning the future of Martin Morton's post and he also queried discussions which he felt had subsequently led to the reinstatement of his post in another Division under another line manager. In his reply on 3 September 2007, [REDACTED] pointed out that *"...this past year has been one of great change within DASS. Considerable discussions have taken place within various forums about the need to ensure that the Department is fit for purpose. The relevance of all posts at all levels has been discussed...within the context of an organisation undergoing significant change..."*

- 5.203 [REDACTED] made it clear that *"...very few staff, at any level, are undertaking roles and responsibilities that are the same as they were 12 months ago. The division in which your post was located no longer exists. The view of this Department is that the post of Supported Living Development Officer best fits within the strategic commissioning arm of the department, not its operational arm..."*

Comments

Deletion of post

5.204 I discussed this aspect of Martin Morton's allegation with [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.205 [REDACTED] indicated that it was important for Service Managers always to be thinking about the future and what changes would be needed in service and organisational terms, which included an understanding of which posts would be required. [REDACTED] recalled that in July 2006 [REDACTED] had heard about Martin Morton's proposed resignation from DASS and, in the circumstances, it was appropriate to consider whether he should be replaced on a like-for-like basis. [REDACTED] pointed out that in the event there was no deletion of Martin Morton's post and there had been no intention to do so. [REDACTED] confirmed that a review of the need for Martin's post had been discussed in the context of a departmental review, where all posts had been under scrutiny. In the event, Martin's post had not been deleted, but it had changed divisions and had been transferred to the "strategic commissioning arm of the department not its operational arm".

[REDACTED]

5.206 [REDACTED] recalled [REDACTED] correspondence and stated that there was some discussion about the context of this i.e. the discussions about restructuring had been on-going for some time and different "branches" in DASS were at different stages in this process. [REDACTED] recalled a meeting on 20 July 2006 to which Martin Morton had referred; it was a divisional meeting of senior managers who were exploring a range of options.

Comments

Task List

5.207 I discussed this aspect of Martin Morton's allegation with [REDACTED] [REDACTED]. Details are shown below:

██████████

5.208 As mentioned previously under Allegation 2(D), ██████████ said Martin Morton had been moved away from his own job as Supported Living Development Officer into something which was more loose and flexible. It was the Task List linked to a proposed new Job Description which specified this revised role and which ██████████ recalled may have been the basis of Martin Morton's subsequent formal grievance about having no work to do.

██████████

5.209 Also as mentioned previously under Allegation 2(D) ██████████ suggested that the Task List encapsulated the work Martin Morton was intended to do; there was, ██████████ said, lots of work for him to do.

██████████

5.210 ██████████ referred to his letter of 3 September 2007 which said *"...This task list, I would suggest, is in keeping with your role... we discussed your job description and that the amendments to it...appeared to be agreed amendments. The main changes weremaking the job description more up-to-date, taking away any ambiguity and clarifying the fact that you had no responsibility for individual work i.e. your role was to be a strategic role..."*

5.211 ██████████ stated that the Task List was produced in order to clarify what work Martin Morton was expected to do. ██████████ pointed out that Martin Morton had not been active in the job of Supported Living Development Officer since September 2006 as he had been absent due to sickness and the situation within DASS had changed. ██████████ stated that the departmental restructuring was resulting in most staff doing different things following the departmental restructure.

5.212 When I asked whether a revised job description for Martin Morton's post had been concluded, ██████████ confirmed that it had not been concluded. ██████████ said ██████████ had tried to discuss it but felt that perhaps he had been too conciliatory.

Findings

5.213 The first part of this issue relates to the alleged deletion of Martin Morton's post of Supported Living Development Officer. He had heard rumours about a management meeting in July 2006 which considered whether his post was needed in the

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future. Understandably this disturbed him. However, when he raised the issue with [REDACTED], he was told that a discussion had taken place in the context of the departmental restructure which had been ongoing for some time: the meeting was a Divisional meeting of senior managers who were exploring options.

5.214 [REDACTED] supported this view when [REDACTED] said that senior managers always need to be thinking about the future and what changes would be needed in service and organisational terms. This is good practice.

5.215 It was in the context of Martin Morton possibly resigning from the Council at that time that this discussion took place. However, [REDACTED] also made it clear that Martin Morton's post had not been deleted, rather it had changed Divisions and been transferred to the Strategic Commissioning arm of the Department. This is where the Task List and discussions over a proposed new job description came in.

5.216 As mentioned previously, under Allegation 2 (D), it appears to me that the Task List and proposed job description retained approximately 50 per cent of Martin Morton's existing duties and responsibilities while introducing others which were new additions, some of which required a contribution at a lower level. The Task List specified that there would be no involvement with service users on an individual basis and that issues about the quality of service providers would be dealt with via the contracts section and care management. Given Martin Morton's commitment to putting service issues above all else, I believe these are the aspects which most troubled him. He subsequently lodged a formal grievance in November 2007 about having no work to do.

5.217 It hardly needs stating in today's local government service but, as we know, the only constant is change: it is inevitable that local authority services change and organisational structures and jobs change with them. In this context, it is standard practice for job descriptions to reflect this requirement for change by including a paragraph about appropriate review arrangements which makes it clear that over time the nature of individual jobs will change and that the Council will expect to revise its job descriptions from time to time. Martin Morton's job description does not include such a paragraph i.e. it is silent on this point.

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5.218 Consequently, I have found that Martin Morton's post was not deleted at any stage; it was under review, together with every other post in the Department and it changed as a result of that review.

5.219 So far as the Task List and a proposed new job description are concerned, the matter was never resolved before Martin Morton left the Council in April 2008. However, while the work envisaged by the Task List and proposed job description was somewhat reduced in its scope and level of responsibility when compared with previously, these documents did extend the range of the work across all service user groups in the new Division. Such changes are not untypical of what can emerge from a departmental restructure which is seeking to ensure the Department keeps pace with the demands of change.

5.220 I do not believe that the provision of a new job Task List or job description, in its own right, was an example of bullying. As previously discussed under Allegation 2 (D), the detrimental effect which those changes had on Martin Morton i.e. further isolation and exclusion arose principally from the way in which these changes were introduced and managed.

Conclusion: Allegation 2(F)

5.221 I have concluded that Martin Morton was not bullied by the deletion of his post and the provision of a new job Task List as he has claimed.

Allegation 2(G)

By being denied access to Supported Living Service files in May 2007;

Statement

5.222 Martin Morton has stated that when preparing his notes for the grievance appeal hearing on 23 May 2007, he had been denied access to departmental files which were relevant to his grievance. Specifically, he said he told the Appeals Subcommittee that he had not been allowed to refer to the files concerning a Supported Living service provider. He claimed that [REDACTED] had taken them away from him since, [REDACTED] [REDACTED] said, they belonged to DASS and Martin Morton could not be allowed to have access to them.

Comments

5.223 I discussed this allegation with [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.224 There was an exchange of emails between [REDACTED] and Martin Morton between 18 – 22 May 2007 which showed that [REDACTED] had denied Martin Morton access to a particular Supported Living service provider's files, as he claimed.

5.225 [REDACTED] stated that [REDACTED] felt that Martin Morton's responsibilities were those set out in [REDACTED] Task List, so it was reasonable for [REDACTED] to question why Martin Morton wanted to see the Service provider files. [REDACTED] stated that when Martin Morton indicated he needed the information in the files for a hearing, [REDACTED] asked if this was relevant to Martin's current responsibilities. In response to this, Martin Morton had clarified that he had a grievance appeal hearing on 23 May and "... I have made claims in my grievance relating to XXX (the service provider) which I have been asked to evidence by the Director. As I am unable to access the files I am unable to do so..." On receiving this response [REDACTED] indicated that [REDACTED] would check with [REDACTED] and having received advice [REDACTED] told Martin Morton "... The advice I have had is that you do not need the files for your current duties. I am, therefore unable to let you have them."

5.226 I asked [REDACTED] if [REDACTED] had spoken to [REDACTED], [REDACTED] at the time of this exchange of emails and [REDACTED] stated that [REDACTED] could not recall who it was that [REDACTED] had spoken to but, [REDACTED] said, it was probably [REDACTED], not least because [REDACTED] was [REDACTED].

5.227 When I asked if [REDACTED] had made it clear to [REDACTED] that Martin Morton's request was made in connection with the grievance appeal hearing that both [REDACTED] and Martin Morton were attending a few days later on 23 May, [REDACTED] indicated that [REDACTED] probably would have made it clear that the request was relating to Martin Morton's grievance.

5.228 [REDACTED] could not recall whether [REDACTED] gave [REDACTED] reasons for the advice given i.e. not to give Martin Morton access to the service provider files. When I asked, bearing in mind that Martin Morton had stated why he wanted access to the service provider files, whether [REDACTED] thought it was a reasonable decision, [REDACTED] stated that such a view was dependent upon the circumstances at the time and, in

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particular, what was going on with the particular service provider and their earlier allegations against Martin Morton. [REDACTED] went on to say that, other than that, and on the face of the grievance on its own, it would have been reasonable to grant Martin Morton access to the service provider files.

- [REDACTED]
- 5.229 [REDACTED] stated that [REDACTED] could not recall why Martin Morton's request had been refused. [REDACTED] thought it may possibly have been because the files requested related to service issues. When asked if [REDACTED] thought it was the right decision, [REDACTED] stated that [REDACTED] would not give Martin Morton access to the files now, either.

- [REDACTED]
- 5.230 [REDACTED] confirmed that [REDACTED] had been involved in discussions with [REDACTED] about Martin Morton's request. However, [REDACTED] stated that [REDACTED] did not know why Martin could not use the particular Supported Living service provider files in his preparation for the grievance hearing. [REDACTED] accepted that it may not have been the right decision to deny Martin Morton access to these files.

Findings

- 5.231 It is clear that Martin Morton was denied access to the files. He made the reasons for his request clear; it was to enable him to prepare his case for the grievance appeal hearing.
- 5.232 The reason for denying him access to the files is not entirely clear: [REDACTED] said "*... the advice I have had is that you do not need them for your current duties*". [REDACTED] could not recall why the request had been refused.
- 5.233 It is worth noting that although he did not request access to the files in relation to his current duties, this was the reason given for the refusal.
- 5.234 It is also worth noting that Martin Morton made his request on Friday, 18 May 2007 and received his response on Tuesday, 22 May 2007 i.e. immediately before the grievance appeal hearing on 23 May 2007. [REDACTED] maintained throughout the grievance case, quite correctly in my view, that service issues such as those contained in the Supported Living service provider files, should not be the subject of a grievance.

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5.235 However, it seems to me that the question here is whether the decision to refuse Martin Morton access to the service provider files was a reasonable one. It seems clear that these files were important to Martin Morton's grievance case and without access to them the preparation of his case would have been hampered. I believe it is an important point to note that the Department against whom Martin Morton had lodged his grievance i.e. DASS, is the same Department which decided whether he could see the files connected with that grievance. There is a clear potential for a conflict of interest to occur in such a situation for whoever makes the decision on behalf of DASS, and, it seems to me, the only way to avoid this conflict would be for either an independent person to make the decision on DASS' behalf, or for access to the files to be granted by DASS automatically. I believe it is to Martin Morton's detriment that this was not recognised.

5.236 In my view, for Martin Morton to make his request for one reason and have it refused for a completely different reason is neither sensible nor reasonable. It is, I believe, an example of inappropriate collective behaviour.

5.237 Moreover, this is a decision which not only denied him access to the files, but also, it denied him access to due process in the conduct of his grievance appeal. This is a matter which is discussed more fully under Allegation 4 (C).

Conclusion: Allegation 2(G)

5.238 I have concluded that Martin Morton was bullied by being denied access to Supported Living Service files in May 2007.

Allegation 2(H)

discussion/correspondence with Martin Morton between October – November 2007 re: the shredding of documents relating to his HR file;

Statement

5.239 Martin Morton was told by a colleague, [REDACTED], that [REDACTED] had been asked by [REDACTED] to shred documents in Martin Morton's HR file on 11 October 2007 (the same date as Martin Morton had made a request to [REDACTED] for access to his HR file). [REDACTED] had been asked not to delegate this task to a junior member of staff. Subsequently, Martin Morton met with [REDACTED] on 12 November 2007 and accused [REDACTED] of authorising the shredding of documents relating to himself: [REDACTED] put this in writing and [REDACTED] replied on 14 November

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2007 by confirming that he had not removed or shredded any paperwork from Martin Morton's personnel file. However, later on the 20 November 2007, [REDACTED] wrote to Martin Morton again and, this time, confirmed that [REDACTED] had, in fact, authorised a member of staff to shred documents relating to Martin Morton; these documents were [REDACTED] "bundle of papers" used at the appeal hearing, which [REDACTED] had given [REDACTED] to be disposed of.

Comments

5.240 I discussed this allegation with [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.241 I asked [REDACTED] about [REDACTED] letter of 14 November 2007 when [REDACTED] said "...I assured you (at their meeting on 12/11/2007) that I had not removed or shredded any paperwork from your personnel file..." [REDACTED] said [REDACTED] was being very guarded about what [REDACTED] said to Martin Morton. This phrase had been a "play on words". After being challenged on this issue, in [REDACTED] letter of 20 November 2007 [REDACTED] had stated "...I can confirm that I did authorise a member of staff to shred documents relating to yourself. These documents were the Director's copy of the bundle of papers used at the appeal hearing..." Subsequently, on reflection, [REDACTED] said that the statement [REDACTED] made in [REDACTED] letter of 14 November 2007, in his mind, answered the question.

5.242 [REDACTED] also stated that [REDACTED] had given Martin Morton further information on this issue after being told by Martin Morton that he (Martin) had been reliably informed about the shredding of these documents by [REDACTED]. In the event [REDACTED] said [REDACTED] had no problem with [REDACTED] over [REDACTED] release of this confidential information to Martin, as this had been done inadvertently and innocently. [REDACTED] confirmed that the documents shredded were the Director's management papers used on 2 July 2007.

[REDACTED]

5.243 [REDACTED] stated that [REDACTED] came to see [REDACTED] with a bundle of papers which [REDACTED] wanted to be shredded. [REDACTED] said that [REDACTED] was not sure what the bundle of papers contained or the subject matter they referred to, but [REDACTED] noticed Martin Morton's name on them, and as [REDACTED] had said it was an urgent matter and the papers were confidential, [REDACTED] just shredded them.

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- 5.244 [REDACTED] then saw Martin Morton a few days later and asked him "... *is everything now sorted?*" [REDACTED] explained that [REDACTED] had seen Martin's name on the bundle of papers to be shredded, but did not know what it was about, as [REDACTED] had not indicated to [REDACTED] what they were. [REDACTED] said the papers comprised a reasonably sized bundle.
- 5.245 [REDACTED] indicated that when [REDACTED] shredded the bundle of papers [REDACTED] was not aware of Martin Morton's request to [REDACTED] to examine the papers on his HR file or that the papers to be shredded were connected with Martin Morton's HR file: they were just papers which needed shredding and [REDACTED] had asked [REDACTED] to do the job personally.
- 5.246 Bearing in mind that [REDACTED] had mentioned that the papers to be shredded were confidential, I asked [REDACTED] about the circumstances of [REDACTED] telling Martin Morton about this. [REDACTED] reiterated that [REDACTED] happened to see Martin Morton a few days later and, in the circumstances, [REDACTED] made what she felt was an innocent enquiry of him, as to whether everything was now resolved. [REDACTED] said that [REDACTED] had just "... *bumped into Martin and asked if things had now settled down*". Martin had then become upset when he learned about the papers being shredded.
- 5.247 [REDACTED] indicated that later [REDACTED] had been called to a meeting with [REDACTED] to discuss the matter and [REDACTED] had related the sequence of events to [REDACTED] i.e. she had "*bumped into*" Martin Morton and made an innocent enquiry of him. [REDACTED] confirmed that [REDACTED] had felt no pressure from [REDACTED] about [REDACTED] denial of shredding documents or [REDACTED] inadvertent disclosure to Martin Morton.

Findings

- 5.248 On 11 October 2007, Martin Morton wanted access to his HR file in order to see if it contained any evidence of an investigation into his whistleblowing allegations. He was given an appointment date of 12 November 2007 for this, but in the interim period he had learned from [REDACTED] about the shredding of documents. Consequently, when he saw [REDACTED] on 12 November 2007 he accused [REDACTED] of authorising the shredding of documents relating to himself.
- 5.249 At this point, Martin Morton was pursuing the issue of an investigation into his allegations because he could find no evidence of an investigation anywhere else. He was hoping to see some evidence on his HR file that this was happening. When he heard about the shredding of documents he deduced

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that these were documents which may have related to such an investigation. He concluded that the contents of the documents may have demonstrated that they:

- (a) confirmed his allegations;
- (b) were concerned with undermining his case; and
- (c) were undermining his professional standing and position.

Hence Martin Morton was upset at the prospect of such documents being destroyed.

5.250 For his part, [REDACTED] stated that the shredded documents were nothing to do with an investigation but were, in fact, [REDACTED] bundle of appeal papers. In other words, Martin Morton had gained the wrong impression. This is perhaps an indication of the state of working relationships at this point in time.

5.251 Because of this state of affairs, [REDACTED] was being very guarded about what he said to Martin Morton and so [REDACTED] told Martin that [REDACTED] had not removed or shredded any paperwork from Martin Morton's file. This was [REDACTED] "play on words" and presumably this would have remained [REDACTED] position on this matter had it not been for [REDACTED] inadvertently "letting the cat out of the bag". At this point, [REDACTED] felt that [REDACTED] had no option other than to clarify matters, hence [REDACTED] second letter to Martin Morton on 20 November 2007 confirming [REDACTED] had authorised the shredding of [REDACTED] bundle of papers.

5.252 It seems that the shredded documents were, in fact, [REDACTED] bundle of papers; [REDACTED] didn't know, but [REDACTED] confirmed it. Given that this was the case, the shredded documents were not what Martin Morton had thought they were. However, on the face of it, the timing of [REDACTED] request to [REDACTED] is curious. It was made on 11 October 2007 i.e. the same day that Martin Morton formally asked to see his HR file. This raised suspicion in Martin Morton's mind about the reasons behind the request. Bearing in mind the state of working relationships at this stage, [REDACTED] apparent change of mind, by way of [REDACTED] clarification in [REDACTED] second letter, contributed further to a bad situation: it put another "nail in the coffin" of Martin Morton's trust and confidence in the way DASS senior managers were dealing with his whole grievance case. I believe there is no doubt that [REDACTED] letter of 14 November 2007 was misleading and, in my opinion, [REDACTED] should have been open and honest with Martin Morton. I believe what happened is inappropriate behaviour.

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5.253 That said, in its own right, the shredding of documents such as [REDACTED] appeals papers is not necessarily an example of bullying behaviour. The Data Protection Act says information should be kept for no longer than is necessary and does not specify what a necessary period should be. Each case is treated on its merits and in this case, [REDACTED] was leaving at the [REDACTED] [REDACTED] [REDACTED]. Whether the shredding of these documents was in accordance with the Council's Corporate Retention and Destruction policy is a matter for the Council to consider. However, the damage in this instance has come not from the shredded documents, but from [REDACTED] misplaced guardedness on which he subsequently had to backtrack.

Conclusion: Allegation 2(H)

5.254 I have concluded that while I do not believe that the shredding of the documents in itself is an example of bullying behaviour, [REDACTED] behaviour was inappropriate, in the manner in which he handled this issue, and this further damaged Martin Morton's trust and confidence in his senior managers.

Failure to support/Undermining someone

Allegation 2(I)

By DASS allegedly putting Martin Morton's compliance with the General Social Care Council (GSCC) Code of Practice at risk;

Statement

5.255 Martin Morton was asked by [REDACTED] to set out the issues he wanted DASS to address in response to his grievance. He did so in an e-mail dated 17 January 2007 and listed 10 questions for the [REDACTED] to answer. Question 9 was: *"I would contend that as a social care employer DASS have put my compliance with all aspects of the GSCC Code of Practice at risk but most particularly:*

- *Protect the rights and promote the interests of service users and carers;*
- *Uphold public trust and confidence in social care services*

How would you defend this allegation?"

Comments

- 5.256 [REDACTED] letter of 12 March 2007 provided DASS' response to this question. It said *"I do not agree that your compliance with the code has been put at risk. As a Registered Social Worker you have brought to the attention of your Managers your concerns regarding a number of issues and these have been acted upon to varying degrees. You may not appreciate the speed of any actions or the work that has gone on behind the scenes taking into account your and others concerns"*

Findings

- 5.257 The General Social Care Council's (GSCC) Code of Practice for Social Care Workers sets out agreed codes of practice for social care workers and employers of social care workers, describing the standards of conduct and practice within which they should work. Social Care Workers have criteria to guide their practice and be clear about what standards of conduct they are expected to meet. They are encouraged to use the codes to examine their own practice and to look for areas in which they can improve. Social Care employers know what part they are expected to play in the regulation of the workforce and the support of high quality social care.
- 5.258 The Care Quality Commission - CQC (formerly the Commission for Social Care Inspection - CSCI) take the code into account in their enforcement of care standards.
- 5.259 The code makes reference to the two points mentioned by Martin Morton and also makes reference to the following points:
- Using established processes and procedures to challenge and report dangerous, abusive, discriminatory or exploitative behaviour and practice;
 - Bringing to the attention of your employer or the appropriate authority resource or operational difficulties that might get in the way of the delivery of safe care;
 - Helping service users and carers to make complaints, taking complaints seriously and responding to them or passing them to the appropriate person;
- 5.260 Given the nature of Martin Morton's concerns, it seems clear that in terms of the requirements of the GSCC Code of Practice he was compelled to bring to the attention of DASS those concerns about service providers and their treatment of service

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users. In doing so Martin Morton was fulfilling the requirements of the Code of Practice.

- 5.261 It is perhaps understandable, as a Registered Social Worker who has serious concerns about Supported Living service providers; that Martin Morton should feel vulnerable in terms of his professional standing vis-à-vis the requirements of the code. However, having reported his concerns persistently, the fact that they were not addressed by DASS in the manner or timescale that Martin Morton would have preferred would not, I believe, put his standing in terms of the code in jeopardy.

Conclusion: Allegation 2(I)

- 5.262 I have concluded that while it is understandable that Martin Morton should feel vulnerable in terms of his professional standing against the requirements of the GSCC code of practice; I believe his actions in reporting his service concerns meant that he met the requirements of the code and was not at risk.

Allegation 2(J)

By [REDACTED] alleged failure to give Martin Morton support when he:

- (i) Reported unfair criticism of himself by a Supported Living service provider, in April 2006, i.e. by advising him to contact his trade union;
- (ii) Wished to challenge a Supported Living service provider re: their management of service users DLA payments in July 2006;

Statement

- 5.263 Martin Morton has stated that he has on several occasions been concerned with his treatment by [REDACTED]. The first example of this relates to when his wife was informed by a friend that she had been told by someone from a particular Supported Living service provider that *"There's a guy called Martin Morton who works for Social Services who is putting vulnerable people in poor quality accommodation and making them suffer"*. Martin Morton claimed that when he advised [REDACTED] that a line had been crossed and the bullying was now extended to his home and personal relationships he was advised to contact his trade union.
- 5.264 The second example relates to correspondence between DASS and the Supported Living service provider. Martin Morton has stated that he had the opportunity to put the matters that concerned him to one of the service provider's Managers (who

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also worked for the Audit Commission), knowing that this manager's position was untenable and consequently the person concerned had no choice but to concede that the company's "financial practices" were distasteful and intrinsically flawed.

- 5.265 When Martin Morton reported this to [REDACTED] [REDACTED] said that *"This puts them in a double bind which I think we should exploit in the best interest of service users...he's either an honest broker and working towards an equitable settlement with the local authority or 'he takes the shilling' and continues to collude with abuse"*. When he received a letter from the service provider admitting *"intrinsic flaws"* Martin Morton compiled a reply which specified concerns that related to fairer charging and challenged the service provider's management of service users Daily Living Allowance (DLA) payments. He stated that *"Unfortunately [REDACTED] requested that I amend my letter and omit any reference to DLA issues"*.

Comments

- 5.266 I discussed these aspects of Martin Morton's allegation with [REDACTED]. Details are shown below:

Unfair criticism

- 5.267 [REDACTED] stated that Martin Morton had not come to [REDACTED] office to discuss this incident. In fact, [REDACTED] had heard about it from [REDACTED] and [REDACTED] had subsequently "bumped into" Martin at work and asked him about it. [REDACTED] also asked him what he wanted to do about the matter and suggested that, perhaps in the first instance, he should contact his trade union. [REDACTED] said [REDACTED] did not hear anymore from him about this matter. [REDACTED] also stated that [REDACTED] did not know what had actually been said, but [REDACTED] had no reason not to accept Martin Morton's statement. [REDACTED] added that [REDACTED] felt [REDACTED] had done everything to support Martin Morton over the last 6 years during the course of his complaints against DASS.

- 5.268 [REDACTED] representative, [REDACTED], suggested that [REDACTED] could not have investigated this incident on "hearsay" and it was perfectly reasonable for [REDACTED] to refer Martin Morton to his trade union. [REDACTED] added that Martin Morton had a line manager and he could have used this route.

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Challenge to a Supported Living Service Provider

- 5.269 [REDACTED] confirmed that [REDACTED] agreed that the Supported Living service provider's policy was distasteful and flawed and [REDACTED] shared Martin Morton's frustration about the company. [REDACTED] reflected that how this matter was to be tackled was the difference in approach: Martin Morton's approach would not be within the law, as advised by Wirral's Solicitors. [REDACTED] pointed out that [REDACTED] was not colluding with the service provider by preventing Martin Morton from challenging them, rather it was a case of Martin Morton's wording was not appropriate to be used in an official Council letter and [REDACTED] asked him to change it. [REDACTED] recalled that Martin Morton's statement was inflammatory and could be seen as libellous. [REDACTED] stressed that [REDACTED] does not collude with abuse and finds it very distasteful for anyone to suggest this was the case: it was, [REDACTED] said, a matter of personal integrity.

Findings

Unfair criticism

- 5.270 There was a history of unfounded allegations being made by the particular service provider against Martin Morton. The reported comment to a family friend appears to be part of this history and part of the context of working relationships with this particular service provider.
- 5.271 Clearly, for such a comment to be passed on to Martin Morton's wife is a distressing development and, as Martin Morton says, the issues involved in the working relationships with the company had now extended to his family situation.
- 5.272 It seems that Martin Morton did not go directly to [REDACTED] about this comment and [REDACTED] heard about it from [REDACTED], who was Martin Morton's [REDACTED]. Consequently, when [REDACTED] and Martin Morton 'bumped into' each other [REDACTED] asked Martin what he wanted to do about it and suggested that, in the first instance, he should contact his trade union. It seems that nothing more was done.
- 5.273 The alleged comment was, of course, a negative one and no doubt reflected the history of the working relationships between Martin Morton and the Supported Living service provider. In that sense it was not an isolated comment and should not have been treated as one.

5.274 The question to consider here is whether [REDACTED] suggestion for Martin Morton to contact his trade union is an appropriate response. From the employer's point of view, consideration of what is the appropriate action to take in any particular case is always based on the circumstances involved. A primary concern is the safety and welfare of employees and it was appropriate for [REDACTED] to ask Martin Morton what he wanted to do. However, at the same time, to suggest that he should contact his trade union, in the first instance, seems to me to be not the most appropriate response that [REDACTED] could have given. Such a response suggests that either [REDACTED] did not believe the issue was important enough to warrant management's attention, or [REDACTED] doubted Martin Morton's claims. It seems clear that [REDACTED] did not doubt what Martin said, so whether she intended to do so or not, [REDACTED] was signalling that the issue wasn't important enough to merit [REDACTED] personal attention.

5.275 This is unfortunate because an appropriate response from a senior manager such as [REDACTED] need not necessarily involve [REDACTED] personally. [REDACTED] could, for instance, have asked Martin Morton and [REDACTED] to discuss the matter and agree a course of action. Alternatively, [REDACTED] could have referred Martin to an HR or legal colleague for advice as to the appropriate action to take.

5.276 It is also important to be borne in mind the view that if the issue is serious enough to be referred to Martin Morton's trade union, it should be serious enough for management to take appropriate action. Referring Martin Morton to his trade union raises the question of what [REDACTED] would have done had Martin and his trade union representative decided they wanted to take action. It seems to me that such a suggestion to contact his trade union puts an inappropriate and unfair onus on the trade union.

5.277 I agree with [REDACTED] when [REDACTED] suggested that [REDACTED] could not investigate the incident based on 'hearsay'. It would perhaps have required an enquiry of Martin Morton's wife and her friend to establish whether they were willing to have the matter taken forward. Whether they would have been or not is, however, not the question here. The question is whether [REDACTED] failed to give Martin Morton support over this issue. In the circumstances, I believe [REDACTED] response was less than should be expected of a senior manager and, at least, [REDACTED] should have referred Martin Morton to his line manager and/or an HR colleague to discuss and decide what to do.

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Challenge to a Supported Living Service Provider

5.278 It is clear that [REDACTED] and Martin Morton agree about the particular Supported Living service provider's charging policy: they both believe it is distasteful and flawed. However, thereafter they disagree on how the matter should be dealt with.

5.279 Whereas Martin Morton saw [REDACTED] request to change the reference in his letter to DLA issues as a failure to give him support, [REDACTED] had sought a legal opinion about Martin Morton's preferred approach and was advised that it was potentially libellous. Consequently, [REDACTED] decided to delete a reference to the DLA issue.

5.280 As the [REDACTED] [REDACTED] involved in the issues which are the subject of the letter being sent by DASS, [REDACTED] takes responsibility for the contents of that correspondence and could not ignore legal advice. This is a reasonable stance to take.

Conclusion: Allegation 2(J)

5.281 I have concluded that:

Unfair criticism

(i) [REDACTED] suggestion, in these circumstances, that Martin Morton should contact his trade union was a failure to give him support as he has claimed; and

Challenge to a Supported Living Service Provider

(ii) That [REDACTED] decision to request Martin Morton to omit any reference to DLA issues from his letter to the Supported Living service provider was appropriate and not a failure to give him support as he has claimed.

Allegation 2(K)

By DASS' handling of Martin Morton's concerns re: XXX (a service provider), as illustrated in [REDACTED] memo dated 18 April 2006 i.e. being advised not to become involved with XXX's staff concerns;

Statement

5.282 Martin Morton has stated that he received a memo from [REDACTED] dated 18 April 2006 about XXX (a service provider) which said, inter alia, "...I need to remind you that you were advised by myself not to become involved with

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meeting staff or former members of staff from XXX due to a serious allegation against you...This allegation maintained that you had a personal interest in making sure that the organisation failed, due to "friendships" with former members of staff. This was investigated with the conclusion that the allegations were unfounded. Nonetheless I advised you for your own sake to distance yourself from the organisation. I reminded you of this on 4 April via e-mail. You have failed to comply with my request."

- 5.283 Discussions over XXX (the service provider) reached a point where Martin Morton produced a report on his concerns which addressed the issues. He had held service review meetings with staff of this company and had real concerns over their style of management e.g. lack of staff training and bullying by managers. Martin Morton claimed that the company had no written contract with DASS, and consequently there was no proper contract monitoring being undertaken. He cited some examples of XXX service user issues at the time.

Comments

- 5.284 I discussed this allegation with [REDACTED]. Details are shown below:

[REDACTED]

- 5.285 [REDACTED] said that XXX were a poor service provider and had been investigated by DASS over the course of a year. However, DASS did not have the same powers over Supported Living at that time, where service users have tenancies, as they had over residential care. [REDACTED] had advised Martin Morton not to mix with XXX staff since their employment issues were matters between themselves and their employers: they were not issues for DASS to be involved with. [REDACTED] said that Martin Morton took this as him "being banned" from doing his job.

- 5.286 [REDACTED] emphasised that [REDACTED] was in agreement with Martin Morton about tackling organisations such as XXX (the service provider), but it was not for DASS to sort out their employment issues. Martin Morton had, however, failed to comply with this position and hence [REDACTED] had told him so in [REDACTED] memo. [REDACTED] had not followed up this failure on Martin's part. [REDACTED] said that Martin Morton could have been subjected to disciplinary proceedings had [REDACTED] chosen to do so, but, as Martin Morton did not work directly for her (he worked for [REDACTED]) [REDACTED] had not pursued this course of action. [REDACTED] also suggested that, at the

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time, [REDACTED] was very busy and under immense pressure already, so [REDACTED] had decided not to add to [REDACTED] workload in this way.

- 5.287 [REDACTED] also suggested that none of the points raised in [REDACTED] memo of 18 April 2006 were aimed at punishing, harassing or bullying Martin Morton, [REDACTED] was always willing to work with him.

Findings

- 5.288 Martin Morton's concerns over XXX being a poor service provider were addressed in the report he produced for DASS. The issues concerned included poor staffing levels; abusive practice; poor living conditions; high risk recruitment and selection procedures and financial abuse. Martin Morton wanted these issues to be taken into account by DASS when making their assessments of XXX.
- 5.289 [REDACTED] was concerned over DASS' previous experience of allegations being made by the same service provider against Martin Morton. Although these were unfounded, [REDACTED] didn't want them to be repeated. Hence, her written reminder to Martin Morton on 18 April 2006.
- 5.290 Again, it seems that [REDACTED] and Martin Morton agree with each other that XXX were a poor service provider. However, the style of approach as to how to address the issues is where they do not agree. On the one hand, Martin Morton felt it was important to listen to and assist, where possible, the staff of XXX and that is why he organised meetings with them. This is where the allegations from XXX (the service provider's) managers of Martin Morton's personal friendships with staff come in. Clearly, Martin Morton's activity with XXX staff led to difficulties between XXX and DASS.
- 5.291 On the other hand, [REDACTED] felt that it was inappropriate for DASS to intervene in staffing matters between XXX (the service provider) and its employees, hence the advice to Martin Morton not to get involved.
- 5.292 The issue here is whether [REDACTED] advice to Martin Morton is an example of her failing to give support to him. There is no disagreement that XXX was a poor organisation that treated both service users and its staff poorly and it clearly is reasonable that DASS should be aware of all these issues when monitoring and assessing XXX (the service provider's) performance.

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5.293 However, that is not to say that DASS should intervene in the staffing issues between XXX and its employee. I agree with [REDACTED] that it is inappropriate to do so.

5.294 What was needed here was a dialogue between staff in DASS i.e. [REDACTED], Martin Morton and others about how the performance of all service providers, not just XXX, should be monitored and regulated. In other words, what criteria should be included in a performance monitoring framework for DASS to use when assessing service providers. In the event, these issues involving XXX (the service provider), contributed significantly to the development of a service provider accreditation process which was instrumental in bringing about improvements to the Supported Living Service.

5.295 Consequently, while Martin Morton's concerns about XXX (the service provider's) staffing issues are understandable (because they are likely to be an indicator of a failing organisation), I do not believe it was inappropriate for [REDACTED] to take the view [REDACTED] did when she advised Martin Morton not to get involved with meeting staff (or former members of staff) of XXX.

Conclusion: Allegation 2(K)

5.296 I have concluded that Martin Morton was not bullied by being advised not to become involved with XXX (a service provider's) staff concerns.

Allegation 2(L)

The alleged breakdown in communications between DASS and Martin Morton which contributed to a deterioration in working relationships and to a fundamental breach of trust and confidence, as evidenced by:

- (i) No Key Issues Exchange (KIE) discussions or supervision notes with his [REDACTED];
- (ii) A lack of contact with him during his 8 months sickness absence between September 2006 and May 2007;
- (iii) No discussion with him of any Occupational Health Unit reports on his health throughout this time;
- (iv) Lack of support when attending a Housing Benefit Tribunal hearing in October 2006;
- (v) A lack of feedback on action being taken by DASS "behind the scenes" in relation to Supported Living Service providers;
- (vi) No return to work interview with his [REDACTED] in May 2007;

Statement

- 5.297 Martin Morton has stated that he felt particularly strongly that Management's response to his return to work after 8 months' sickness absence had been especially poor. He had had no welfare visits or telephone calls while off sick; and did not have a Return to Work interview. When he came back to work, he felt there had been no welfare support from DASS throughout his period of absence.
- 5.298 He also told the Appeals Sub-Committee on 2 July 2007 that he had infrequent supervision meetings with his [REDACTED] but he was asked to concentrate on work related tasks. He stated that there was a prescribed form for the supervision session but it had never been used: he had asked for copies of the notes from these sessions but had never received them. Martin Morton also told the Appeals Sub-Committee that there was a requirement for a twelve monthly key issues exchange. He stated that he had never had a KIE but by that time he was disillusioned with the Department and had not pursued the matter.
- 5.299 In addition Martin Morton has claimed that despite being on sickness leave he was approached by the Borough Solicitor's office in October 2006 to attend a Housing Benefit Tribunal as a representative of DASS. He stated that he found that this experience was highly stressful and personally humiliating as he was subject to what he felt were false and malicious accusations under cross examination. Martin stated that he received no support from DASS during or after the hearing. He stated also that the [REDACTED] explained that [REDACTED] considered this to be a misunderstanding.

Comments

- 5.300 I discussed this allegation with [REDACTED] and [REDACTED] who was Martin Morton's [REDACTED] following his return to work in May 2007. I also considered comments made by [REDACTED] and [REDACTED]. I was unable to discuss the matter with [REDACTED] who was Martin Morton's [REDACTED] during the period prior to May 2007. Details are shown below:
- [REDACTED]
- 5.301 [REDACTED] stated that [REDACTED] was not involved with any KIE discussions with Martin Morton as these would have been undertaken by his [REDACTED] [REDACTED] who would also have held supervision sessions with him. [REDACTED] said

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██████ recalled that ██████████ had held supervision sessions with Martin Morton and had handwritten copies of the notes of them but these were not typed because of a shortage of admin. resources available for Learning Disabilities staff over a lengthy period at that time. ██████████ had suggested that these handwritten notes could be photocopied and then shared with Martin Morton.

5.302 On the specific point about KIE sessions ██████████ said ██████████ could not comment directly. However, if supervision took place regularly, ██████████ felt that this could take the place of a KIE session. ██████████ also stated that as Martin Morton was a Team Manager it was open to him to push for a copy of the supervision notes or alternatively to take the notes himself and share them with his line manager, as part of a two-way conversation.

5.303 ██████████ also stated that contact with staff who are absent on sickness leave should be regular. ██████████ was not aware of what contact had been made by ██████████ during Martin Morton's period of sickness leave. However, ██████████ recalled that Martin Morton had submitted his original grievance in September 2006 and this may have had a bearing on the level of contact ██████████ would have made.

5.304 ██████████ also made the point that during this sickness absence period Martin Morton's grievance was being dealt with by ██████████ and ██████████ directly. Consequently, Martin Morton was attending meetings at work with ██████████ and, as a result, other managers such as ██████████ would not know whether these discussions included the subject of Martin's sickness absence or his welfare.

5.305 On the question of OHU reports, ██████████ said ██████████ had no discussions on these reports as they are dealt with by HR.

██████████

5.306 ██████████ stated that the Department's policy in such matters was for the employee's line manager to keep a regular contact with the employee during any lengthy period of sickness absence (as well as the employee also taking responsibility for keeping in contact with their manager). ██████████ thought that contact on a monthly basis was reasonable.

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5.307 [REDACTED] recalled that [REDACTED] had spoken to [REDACTED] and, in the circumstances of Martin Morton's grievance being discussed with [REDACTED] by [REDACTED] and [REDACTED] at the same time as his sickness absence, [REDACTED] was not sure whether it was appropriate for [REDACTED] to maintain contact with Martin Morton. [REDACTED] thought that [REDACTED] may have been advised not to contact Martin Morton while his grievance was being discussed but [REDACTED] was not be sure about this.

5.308 [REDACTED] confirmed that the Department's policy on the question of OHU reports was for such reports to be received by DASS' HR section who would pass them on to the appropriate line manager for discussion with the employee concerned. Given the Department's normal arrangements on maintaining contact with an employee during their period of sickness absence, any discussion about OHU reports could take place at the same time. [REDACTED] also confirmed that during this period of Martin Morton's sickness absence, Martin's grievance claims were being discussed with him by [REDACTED] and [REDACTED] personally. However, these discussions did not extend to the reasons for Martin's sickness absence.

[REDACTED]

5.309 As part of his consideration of Martin Morton's grievance, [REDACTED] held a problem solving meeting with Martin Morton on 28 November 2006. At that meeting the subject of Martin's attendance at the Housing Benefit Tribunal was discussed. At that meeting [REDACTED] said *"...we have reached a point, (where the) issue is largely about communication: information, support, counsel. (These) had broken down..."* [REDACTED] asked Martin Morton if he was asked if it was OK for him to attend the Tribunal or whether he was called as a witness. He explained that if Martin attended as a witness then [REDACTED] should have been asked formally. [REDACTED] stated that he didn't think DASS were clear whether Martin Morton was a witness or a supporter of the process.

5.310 On the question of a lack of feedback on action being taken by DASS *"behind the scenes"* the notes of Martin Morton's formal grievance hearing with [REDACTED] on 5 February 2007 indicate that [REDACTED] stated *"there are circumstances when staff should be told why X has not happened, but it should be covered through supervision. (The) Department may hide behind a bigger picture which you can't be told about. You feel that has not happened to enable you to feel comfortable not compromised."*

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- 5.311 In addition, in his letter of 12 March 2007 when he gave his formal response to Martin Morton's grievance [REDACTED] stated *"In conclusion as I have said previously, there has been a breakdown in communication between you and your line managers. You have raised issues and for various reasons, some defendable others not, feedback has not been given to you, or has not been quick enough or an explanation of the process being followed by the department given."*
- 5.312 As mentioned previously, [REDACTED] also commented that during the time [REDACTED] was planning [REDACTED] [REDACTED] from the Council [REDACTED] had some supervision discussions with [REDACTED] about the importance of maintaining good communications with Martin Morton; [REDACTED] message was *"let's not repeat what had happened previously but try to get along better"*. [REDACTED] said the introduction of a Task List was an attempt to ensure this happened.
- [REDACTED]
- 5.313 I asked [REDACTED] why [REDACTED] had not met with Martin Morton on his return in accordance with normal return to work policy arrangements and [REDACTED] indicated that due to the difficult circumstances which applied in Martin's case, [REDACTED] was not clear whose role it was to conduct such an interview. [REDACTED] accepted that it was reasonable for Martin Morton to expect a RTW interview and [REDACTED] felt, on reflection, that [REDACTED] should have questioned whose responsibility it was. [REDACTED] accepted that this was a missed opportunity and could be deemed as poor management practice. [REDACTED] did, however, meet with Martin Morton on 8 May 2007, which was his first day in work, to discuss his return and stated that there had been communication before the bank holiday between Martin Morton and [REDACTED]
- [REDACTED]
- 5.314 [REDACTED] commented that, in terms of the management of Martin Morton, it was clear to [REDACTED] that the breakdown in working relationships had occurred over a long period of time. Martin Morton was perceived by managers as someone with whom there were problems and difficulties. [REDACTED] recalled that, in Martin Morton's case, [REDACTED] [REDACTED] [REDACTED] had no supervision notes about management discussions/processes and, as a result, [REDACTED] [REDACTED] could not have absolute confidence at the way Departmental managers had handled Martin Morton's complaints or the issues surrounding them. [REDACTED] said that Notes had not always been taken which recorded clearly what had been discussed and decided.

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Findings

- 5.315 These examples of an alleged breakdown in communications between DASS and Martin Morton relate mainly to issues which involve [REDACTED]. Key Issues Exchanges (KIE) and supervision sessions are at the heart of good communications between a manager and her/his staff and this is no less the case for DASS. Consequently, KIE and supervision sessions should be a routine and regular practice throughout the Department. It can sometimes be the case that attention to such staffing processes can get driven out by other pressures but, in my view, this is why good practice such as this should be prioritised.
- 5.316 Similarly, contact with a member of staff who is on long term sickness leave should also be regular and there should be no question that advice received in medical reports sought from the Occupational Health Unit should be discussed with the employee concerned.
- 5.317 I have been unable to discuss these matters with [REDACTED] so I am unaware of [REDACTED] views, but based on Martin Morton's perspective, it seems that there was either limited or no contact between [REDACTED] and Martin in such supervision and KIE sessions.
- 5.318 [REDACTED] has pointed out that [REDACTED] did have handwritten notes of supervision sessions, but even allowing for the limited typing resources, it is inappropriate that such notes should not have been shared with Martin Morton as he requested.
- 5.319 The lack of contact during Martin Morton's sickness absence is also inappropriate. The Department's policy on such matters is clear but this did not happen. Bearing in mind that Martin Morton's grievance claims were being dealt with separately i.e. [REDACTED] was not involved in the discussions, it would seem on the face of it, that this absence of contact with him was an error of judgement. However, [REDACTED] was one of the people mentioned in Martin Morton's grievance so working relationships between them would have been strained. What DASS did not do was find another officer who could have maintained [REDACTED] on behalf of the Department e.g. an HR officer.
- 5.320 Similarly, on any employees return to work following sickness absence, it should be the case that a return to work(RTW) interview is held as a means of assisting the employee to make a smooth re-entry into the workplace, while at the same time

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being an opportunity to discuss any outstanding health questions. This is certainly part of the Council's policy. However, this was not undertaken by Martin Morton's [REDACTED] [REDACTED] when Martin Morton returned in May 2007.

- 5.321 I think it is reasonable to assume that both [REDACTED] and [REDACTED] knew what was expected of them in these matters. However, I believe they did not do so because, as [REDACTED] suggested, Martin Morton was perceived as someone with whom there were problems and difficulties.
- 5.322 Clearly, in situations such as this (although Martin Morton's case is far from being a typical example), the demands placed on managers are even greater than is normally the case and attention to such important staff processes is a vital part of maintaining a viable and credible working relationship. The absence of such routine good practice demonstrates that there was a breakdown in communications with Martin Morton over these matters and it seems that such a breakdown contributed to a further deterioration in working relationships which led, in due course, to a fundamental breach of trust and confidence between himself and his employer, as represented by DASS.
- 5.323 Certainly, [REDACTED] accepted there had been a breakdown in communications between Martin Morton and his line managers when [REDACTED] gave his formal response to Martin Morton's grievance in [REDACTED] letter of 12 March 2007. [REDACTED] specifically addressed the issue of a lack of feedback to Martin Morton when [REDACTED] said that *"there are circumstances when staff should be told why X has not happened, but it should be covered through supervision..."* Clearly, this comes back to the issues which involve his [REDACTED] [REDACTED] was also clear in his message to [REDACTED] prior to [REDACTED] [REDACTED] when [REDACTED] said *"let's not repeat what happened previously"*.
- 5.324 [REDACTED] confirmed this view when [REDACTED] stated that it was clear to [REDACTED] that the breakdown in working relationships occurred over a long period of time. [REDACTED] recalled that in Martin Morton's case [REDACTED] [REDACTED] had no supervision notes about management discussions/processes and as a result [REDACTED] could not have absolute confidence at the way departmental managers had handled Martin Morton's complaints or the issues surrounding them.

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Conclusion: Allegation 2(L)

- 5.325 I have concluded that there was a breakdown in communications between DASS and Martin Morton which contributed to a deterioration in working relationships and to a fundamental breach of trust and confidence between himself and his employer.

Allegation 2 (M)

The preparation and consideration of Management reports which Martin Morton alleges were written by [REDACTED] in May 2007, with the purpose of undermining his grievance case;

Statement

- 5.326 Martin Morton has stated that he had found e-versions of reports about his complaints which had been written by [REDACTED], under the titles of "Personal Treatment" and "MM - Grievance Analysis". Martin felt that these reports were deliberately aimed at undermining his case. He said he had made a Freedom of Information request to confirm their whereabouts and had received a reply which had said that such reports did not exist. Martin Morton suggested that these reports may have been shredded in October 2007 or November 2007 when he had his conversation with [REDACTED]
- 5.327 However, subsequently the reports had been located on the Council's server and copies were sent to him. This aspect is considered under Allegation 4(F).
- 5.328 These two sets of papers are in tabulation format rather than report format and comprise (i) a summary of five basic themes to Martin's grievance under the title "Personal Treatment"; and (ii) a list of his various grievance issues under the title "MM - Grievance Analysis". In both cases they contain comments and rebuttals linked to the listed grievance points.

Comments

- 5.329 I discussed this allegation with [REDACTED] and [REDACTED]. I was unable to discuss the matter with [REDACTED]. Details are shown below:

[REDACTED]

5.330 I referred [REDACTED] to the two reports titled "MM Grievance Analysis" and "Personal Treatment" which Martin Morton had claimed were written by [REDACTED]. When I asked if [REDACTED] recognised these reports and/or had commissioned them from [REDACTED], [REDACTED] stated that he didn't recognise them.

5.331 I then referred [REDACTED] to an extract from the reports which said that "...throwaway comments [such as] - [REDACTED] [to Martin Morton] 'you are a dogsbody' are not professional - but none is 100% of the time. Do we really want to work in an environment that is so correct throwaway banter is outlawed..." [REDACTED] responded by referring to a Joint Review report on DASS which had commented on the personal standards of staff e.g. in dress and in how staff addressed each other. [REDACTED] said that [REDACTED] and [REDACTED] managers took a very determined 'line concerning managers' behaviour and how they spoke to each other. [REDACTED] said it was important to avoid being sloppy over such matters.

[REDACTED]

5.332 [REDACTED] confirmed that the reports titled as "MM Grievance Analysis" and "Personal Treatment" were reports written by [REDACTED]. [REDACTED] said that [REDACTED] had asked [REDACTED] to prepare these reports but they had not been presented at the appeal hearings. He indicated that, in fact, these papers had actually been used as the basis for [REDACTED] letter to Martin Morton, dated 29th June 2007, which set out the [REDACTED] response to Martin's original grievance. [REDACTED] said that the letter was drafted by him following a meeting with Martin Morton on 25 June 2007 and he considered these reports to be background information for that meeting and subsequent letter.

5.333 A copy of the letter had been issued with the agenda papers for the grievance appeal hearing on 2 July 2007.

[REDACTED]

5.334 [REDACTED] confirmed that [REDACTED] had not seen these reports. When asked, [REDACTED] felt that they may have been written by [REDACTED] as [REDACTED] was working with [REDACTED] at the time, but [REDACTED] was not managing [REDACTED] at this point in time.

5.335 [REDACTED] confirmed [REDACTED] had become aware of these reports recently and assumed they were prepared by [REDACTED]. [REDACTED] said [REDACTED] recalled that [REDACTED] had been asked by [REDACTED] to compile a briefing as part of management's preparations for the appeal hearing on 23 May 2007. However, [REDACTED] had not been involved in the production of the documents and had no knowledge of their contents.

5.336 I asked [REDACTED] for [REDACTED] comments on the reference on page 2 of the document headed "*Personal Treatment*" which stated "*...The humiliation of... being told by [REDACTED] he (Martin Morton) was not a high enough grade for SP tasks...*" [REDACTED] said [REDACTED] did not recall saying this but felt that it may have been a "*throwaway line*". [REDACTED] felt that it was difficult to respond but acknowledged that it was not professional to make such comments. Subsequently, on reflection, [REDACTED] added that on re-reading this [REDACTED] thought it was open to misinterpretation. [REDACTED] thought there was nothing unprofessional about comparing a person's grade to the tasks they undertake; [REDACTED] suggested that you could equally argue that failure to do so is also unprofessional.

5.337 I also asked [REDACTED] for [REDACTED] comments on the reference on page 2 of the same document which stated "*...Throwaway comments : [REDACTED] - 'you are a dogsbody' ...Not professional - but none is 100% of the time. Do we really want to work in an environment that is so correct throwaway banter is outlawed...*" Again [REDACTED] felt that it was difficult to respond but agreed with the comment in the document that such comments as "*...you're a dogsbody...*" are not professional. [REDACTED] also acknowledged that, with hindsight, the second sentence i.e. "*Do we really want to work in an environment that is so correct throwaway banter is outlawed*" was an equally insensitive "*throwaway*" line.

Findings

5.338 Martin Morton was concerned that these reports were commissioned in order to undermine his case and when he was told they did not exist, this confirmed his view. He referred to them as secret reports. Eventually it was confirmed to Martin Morton that they did exist and official copies were supplied to him.

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5.339 [REDACTED] confirmed why and how these reports had been written: they were the foundation for [REDACTED] response to Martin Morton's original grievance which was written in time for the grievance appeal hearing on 2 July 2007. It seems that they were not shared with other senior managers since [REDACTED] and [REDACTED] were dealing with Martin Morton's grievance personally.

5.340 In my view some of the comments in these reports are inappropriate e.g. "...throwaway comments like "you're a dogsbody" are not professional but none is 100% of the time. Do we really want to work in an environment that is so correct throwaway banter is outlawed"... Telling a subordinate member of staff they are a "dogsbody" in a meeting of senior managers is not banter.

5.341 However, such comments did not find their way into [REDACTED] letter of 29 June 2007 because, [REDACTED] said, [REDACTED] and [REDACTED] managers took a very determined line concerning managers' behaviour and how they spoke to each other.

5.342 It is not surprising that an analysis of Martin Morton's grievance issues should be prepared in order to enable DASS to respond fully to them. Elected Members at the grievance appeal hearing on 23 May 2007 had asked for this to be done and these reports were the basis of the [REDACTED] response. Consequently, these reports were management side papers and clearly many of the points contained in them were intended to be rebuttals of Martin Morton's claims because DASS did not accept those claims. The reports included some inappropriate remarks but these didn't "see the light of day" in the [REDACTED] final, official response.

5.343 Consequently, I do not believe that Martin Morton was bullied by the preparation and consideration of these management reports.

Conclusion: Allegation 2(M)

5.344 I have concluded that Martin Morton was not bullied by the preparation and consideration of these Management reports as he has claimed.

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Allegation 2(N)

The offer to Martin Morton by Corporate HR of redeployment opportunities to posts of Care Assistant and Cleaner;

Statement

- 5.345 Martin Morton has claimed that he was sent correspondence detailing redeployment opportunities to Care Assistant/Cleaner posts.

Comments

- 5.346 I discussed this allegation with [REDACTED] and [REDACTED], DASS. Details are shown below:
- [REDACTED]

- 5.347 [REDACTED] stated that Departments had primary responsibility for sorting out redeployment opportunities for their staff. Any residual issues or lack of departmental opportunities would be sorted by Corporate HR. In this context, [REDACTED] suggested that his corporate team had sent Martin Morton a copy of the corporate Jobs Bulletin for him to look at and decide if there were any redeployment opportunities he might wish to consider. This corporate Jobs Bulletin contained details of all and every job available, from time to time, and would therefore have included jobs of the sort mentioned in Martin's statement.
- [REDACTED]

- 5.348 [REDACTED] confirmed that as the Occupational Health Unit had recommended that Martin Morton should be considered for alternative employment, his name had been included in the Redeployment Register and consequently he had been sent the authority's jobs bulletin by a member of the HR team. If Martin Morton had been interested in any particular job(s) he was asked to let HR know who could then take his interest forward - this is standard wording when the bulletins are issued.

Findings

- 5.349 A letter from [REDACTED] to Martin Morton dated 25 January 2008 confirmed that Martin's name had been included on the Redeployment register. The letter indicated that in order to assist with this process HR had made arrangements for the Council's fortnightly HR Bulletin to be sent to his home address.

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This Bulletin included a summary of all the posts being advertised within the Authority. If Martin Morton was interested in any of these vacancies he was asked to contact the Corporate Redeployment Team.

5.350 The question here is whether it was appropriate to include Martin Morton's name on the redeployment register. However, this was done following one of Martin's referrals to the OHU who recommended that he should be considered for alternative employment. In these circumstances it is perhaps not unreasonable for his name to be included on the redeployment register. Once this had been done the corporate processes are put into place and, for all employees with their name on the register, the authority-wide jobs bulletin is sent to them for their consideration. Given this practice, it is inevitable that the bulletin will include jobs at every level of the organisation and it is not intended or implied that all of these will be appropriate for everyone. Each employee is asked to express an interest in those they wish to pursue.

5.351 In the circumstances I do not believe that Martin Morton has been disadvantaged by these arrangements.

Conclusion: Allegation 2(N)

5.352 I have concluded that Martin Morton has not been bullied by being sent copies of the HR Bulletin which included details of redeployment opportunities.

Allegation 2(O)

The preparation of [REDACTED] note for Martin Morton's file, dated 31 October 2007, in relation to his grievance/whistleblowing claims;

Statement

5.353 Martin Morton has referred to a note placed on his HR file by [REDACTED] immediately before [REDACTED] retired at the end of October 2007. Martin Morton had accessed this note when searching his personal records. This note read as follows:

"I can confirm that following the withdrawal of his grievance to Members Appeal by Mr Martin Morton, I offered the Councillors who were on the Appeal a briefing after the hearing. At a later date I briefed Councillor [REDACTED] to ensure that any concerns that she and her fellow members may have had regarding issues raised by Mr Morton were not ignored. I also took the opportunity to arrange for [REDACTED], [REDACTED] [REDACTED] to join us to answer any queries." [REDACTED] 31/10/07]

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5.354 As mentioned previously Martin Morton wanted access to his HR file in order to see if it contained any evidence of an investigation into his whistleblowing allegations. He contacted [REDACTED] and at the same time he gained access to his own HR file to see if there was any evidence of his allegations being investigated. In the light of finding no evidence of an investigation on his file he outlined his concerns in an email to the Audit Commission on 12 October 2007.

5.355 On 22 October 2007, [REDACTED] responded by confirming *"...when you withdrew your grievance [on 3 July 2007], I must say it was a natural response on the part of the Council to assume also that you were withdrawing any related whistleblowing complaint."*

5.356 Martin replied on 29 October 2007 to confirm that he wished his allegations to be investigated, since it was clear, they never had been. However, on 16 November 2007, [REDACTED] indicated that an investigation had been carried out. He said *"... following your withdrawal of your grievance, the Chair of the Appeals Panel met with the [REDACTED] in order to discuss the wider issues raised at your grievance appeal and you will appreciate that the contents of that discussion are confidential. It is therefore incorrect for you to say that there has been no investigation into any of the issues you have raised."* Martin Morton responded to [REDACTED] by quoting from the note placed on his HR file by [REDACTED].

5.357 Martin Morton has stated that, in these circumstances, he felt the timing of the placing of this note on his file on 31 October 2007 had been curious, since that was the day [REDACTED] [REDACTED]

Comments

5.358 I discussed this allegation with [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:

5.359 I asked [REDACTED] to clarify the circumstances which led to him placing this note on Martin Morton's HR file and he responded by stating that writing this note had been on his *"outstanding items list"* prior to [REDACTED] [REDACTED] [REDACTED]. He wanted to do the note in order to leave things tidy. He explained that nobody else was involved in preparing the note: he was just being assiduous.

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[REDACTED]

5.360 [REDACTED] said that he did not know how this note had come about, but suggested that, as [REDACTED] had seen Councillor [REDACTED] after Martin Morton's appeal had been withdrawn, perhaps [REDACTED] had suggested that a note should be put on Martin's file.

[REDACTED]

5.361 [REDACTED] indicated that this note had been put on Martin Morton's file by [REDACTED] because he had been asked to do so by [REDACTED] or [REDACTED]. [REDACTED] thought that this may have been because Martin Morton had raised the issue of an investigation in his correspondence and [REDACTED] was restating the position.

Findings

5.362 The reasons for this note appearing on Martin Morton's HR file are not entirely clear. In the background to this question is Martin Morton's request for an investigation into his whistleblowing allegations which [REDACTED] thought was unnecessary because, he said, an investigation had been carried out via [REDACTED] meeting with the Appeals Panel members. However, Martin Morton disputed this.

5.363 [REDACTED] thought [REDACTED] may have suggested that the note should be put on the file; which [REDACTED] said [REDACTED] was asked to do so by [REDACTED] or [REDACTED], possibly because Martin Morton had raised the issue of an investigation. On the other hand, [REDACTED] said he was "tidying things up" before [REDACTED] and nobody else was involved in preparing the note.

5.364 In any event, the question here is what effect did putting the note on the file have. First, it placed on record management's position, as suggested by [REDACTED]. This was perhaps felt to be appropriate because Martin Morton had withdrawn his grievance appeal and management's position had not been fully stated in that process. Secondly, in the light of management's position, I don't believe the note had any effect concerning Martin's request for an investigation of his whistleblowing allegations since he had already spoken to the Audit Commission. He was later refused an investigation by [REDACTED].

[REDACTED]

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- 5.365 Consequently, while the timing of putting this note on Martin Morton's HR file may have seemed to him to be curious, I do not think it had the effect of undermining him or that it made any difference to the outcome of his request for an investigation of his whistleblowing allegations.

Conclusion: Allegation 2(O)

- 5.366 I have concluded that Martin Morton was not disadvantaged by the preparation of [REDACTED] note for Martin Morton's HR file, dated 31 October 2007.

Allegation 2(P)

Alleged threats of disciplinary action in separate correspondence from [REDACTED] and [REDACTED] in November 2007;

Statement

- 5.367 Martin Morton has stated that [REDACTED] threatened him with disciplinary action if he took his concerns to a third party. In making this allegation he referred to his correspondence with [REDACTED] concerning his request for an investigation into his whistleblowing allegations. In his letter to [REDACTED] dated 22 October 2007 Martin said *"...my lack of trust in Council processes necessitates that I take particular matters to the relevant external agencies."*

- 5.368 [REDACTED] reply of 16 November 2007 stated *"...I have noted the final paragraph of your letter (i.e. Martin's reference to taking matters to the relevant external agencies) and I feel that it is important that I bring to your attention that any breach of confidence by an employee, under the ACAS Code of Conduct is considered to represent gross misconduct. Accordingly, any such breach on your part to a third party outside of the Council would be considered as potentially representing gross misconduct and would be considered under the Council's disciplinary policy."*

- 5.369 Separately, Martin Morton has also said that prior to accessing his personal file to check for any evidence of an investigation of his whistleblowing allegations, on 8 November 2007 he had been told by [REDACTED] that to disclose information to any unauthorised person or organisation would need the agreement of the [REDACTED] and any breach could lead to disciplinary action.

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Comments

- 5.370 I discussed this allegation with [REDACTED] and I have also considered the comments in [REDACTED] correspondence. Details are shown below:

[REDACTED]

- 5.371 [REDACTED] indicated that when he was drafting [REDACTED] letter of 16 November 2007 [REDACTED] discussed it with [REDACTED] who had wanted the reference to the disciplinary process to be included in the letter since they both thought Martin Morton may go to the press. When asked if [REDACTED] thought it was appropriate to make such a reference in the letter, [REDACTED] said [REDACTED] could understand the perception with which Martin Morton would view the reference. However, [REDACTED] suggested that it was nothing sinister, rather it was just that [REDACTED] and [REDACTED] "didn't want Martin to get into any trouble". [REDACTED] felt that, with the benefit of hindsight, the letter could have been clearer about what is protected and what is not protected under the Public Interest Disclosure Act (PIDA) arrangements,

[REDACTED]

- 5.372 In response to Martin Morton's request to see his HR file, [REDACTED] responded by letter on 8 November 2007 and gave Martin the date of 12 November 2007 to do this. In addition to his request to see his HR file, Martin Morton had also asked for copies of (i) DASS' internal XXX (a service provider's) Investigation Report ([REDACTED]) (November 2005); and (ii) Investigating Officers Grievance Investigation Reports 2006/07.

- 5.373 Bearing in mind the nature of this information [REDACTED] letter said "...All of the above paperwork is provided to you in confidence, given the confidential nature of the paperwork e.g. XXX Investigation. It is given on the basis that you would want to know what complaints were made and why the Department dismissed those complaints. I also need to point to you that these papers cannot be shared /disclosed to any unauthorised person due to individuals being mentioned in the papers. To disclose to any unauthorised person or organisation would need the agreement of the [REDACTED] of [REDACTED] [REDACTED] and any breach could lead to disciplinary action."

Findings

- 5.374 By the time of his letter of 22 October 2007 to [REDACTED] Martin Morton had lost faith in the way in which the Council's senior officers were dealing with his request for an investigation into his whistleblowing allegations and he had already met with officers of the Audit Commission. It was the Audit Commission he was thinking of in his letter when he referred to "...*relevant external agencies*".
- 5.375 However, it seems that [REDACTED], in consultation with [REDACTED], misread this reference as an indication that Martin Morton may be about to go to the press and so they attempted to prevent him from doing so by drawing to his attention that any breach of confidence to a third party outside the Council would be considered as potentially representing gross misconduct and would be considered through the Council's disciplinary procedure. This is a very clear statement.
- 5.376 Clearly [REDACTED] was seeking to protect the Council's best interests but, it appears that [REDACTED] had not considered that Martin Morton may have been referring to a PIDA disclosure within the scope of the Council's Whistleblowing policy. [REDACTED] stated that there was nothing sinister in his reference to gross misconduct but [REDACTED] accepted, with the benefit of hindsight, that [REDACTED] letter could have been clearer about what is protected and not protected under PIDA arrangements.
- 5.377 Without this clarity, it is easy to see why Martin Morton would interpret this letter as containing a threat of disciplinary action should he go to a third party outside the Council.
- 5.378 It seems, therefore, that [REDACTED] has missed the point about treating Martin Morton's request for an investigation as a whistleblowing case and that [REDACTED] has also misjudged Martin Morton's intentions in taking matters outside the Council.
- 5.379 On the separate point of [REDACTED] correspondence, Martin Morton's request to see his HR file also included the other documents referred to. Clearly, these other documents, potentially at least, contained confidential information as stated by [REDACTED] which should be protected within the requirements of legislation and the Council's policy. In [REDACTED] letter of 8 November 2007, [REDACTED] was making this position clear to Martin Morton at the outset. While Martin Morton may have felt that the reference to the possibility that "*any breach could lead to disciplinary action*" may have been unnecessary, it is not unusual to set out the "ground rules" in this way when dealing with requests from staff for such confidential

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information. While [REDACTED] letter may have been a bit "heavy handed" his concern was, I believe, to maintain confidentiality not to threaten Martin Morton with disciplinary action.

- 5.380 In the case of both of these instances, the exchanges between the parties are, I believe, a clear indicator of the mistrust and almost non-existent working relationships which prevailed by this time.

Conclusion: Allegation 2(P)

- 5.381 I have concluded that:

- (i) [REDACTED] reference to gross misconduct and the Council's disciplinary policy in [REDACTED] letter to Martin Morton of 16 November 2007 was threatening and is an example of inappropriate behaviour which undermined him; and
- (ii) While [REDACTED] reference to disciplinary action in [REDACTED] letter to Martin Morton of 8 November 2007 was "heavy handed" I do not think it was an example of bullying behaviour.

3 Abuse of Power – Denial of due process (Departmental)

- 5.382 Bullying is a form of abuse of power. For the purposes of this investigation the term abuse of power is used here to describe the improper or inappropriate use of authority by someone who has that authority because they hold a particular office.

- 5.383 Martin Morton's claims are shown as allegations of the denial of due process in relation to his grievance and whistleblowing claims as evidenced by:

Allegation 3(A)

DASS consideration/discussion and correspondence with Martin Morton re: his formal grievance/whistleblowing claims between August 2006 and February 2007 i.e.

- (i) alleged long delay; excessive problem solving meetings;
- (ii) being told that DASS has no statutory powers to intervene;
- (iii) being told that the Director is not accountable to Martin Morton;

Statement

- 5.384 In the notes of a problem solving meeting on 30 May 2007 i.e. after the Appeals Sub-Committee hearing on 23 May 2007, Martin Morton set out his position on his grievance by saying *"...my grievance is about being supported, listened to, demeaned, grievance process adding to them; the responses echoed what I had to put up with. Want to appeal because of that..."*

Comments

(i) Alleged long delay/Excessive problem solving meetings

- 5.385 Martin Morton submitted his formal grievance on 18 September 2006. It is always good practice to attempt to resolve grievances informally if this is possible and the Council's Grievance Procedure recognises this when it states *"Most routine complaints and grievances are best resolved informally via the ongoing supervisory process...if an issue remains outstanding employees have the right to refer such issues through the formal grievance procedure...Timescales can be varied at any stage ...provided they are mutually agreed..."* DASS address the informal approach to resolving grievances by using problem solving meetings.
- 5.386 Martin Morton has stated that when he submitted his formal grievance, on the advice of his Unison solicitor, this was under both the whistleblowing procedure for his complaints concerning what he saw as bad practice in the delivery of the Supported Living Service; and under the grievance procedure, in terms of the detrimental treatment that he felt he had been receiving since making his views about the service known to his senior colleagues.
- 5.387 He received no acknowledgement of his submission or any response to it. Consequently, in accordance with the terms of the grievance procedure, he forwarded his submission to the [REDACTED], [REDACTED], on 10 October 2006. He suggested that this was the reason why, on 14 October 2006, he received a request from [REDACTED] to attend "a discussion". In view of the allegations being made, which included allegations against [REDACTED] as [REDACTED], consideration of them had to be at a senior level and [REDACTED] decided to deal with matters personally. Subsequently, the first informal meeting to consider the complaints Martin Morton had submitted on 18 September 2006 was held 6 November 2006. [REDACTED] was being very open and was looking for a solution.

5.388 Further problem solving meetings with [REDACTED] and [REDACTED] were held on 28 November and 18 December 2006 but Martin Morton claimed there was no talk about an investigation into his complaints. Instead, at a third follow-up meeting on 4 January 2007, [REDACTED] asked Martin to *"set out the questions you wish the [REDACTED] to answer in the grievance proceedings you have begun"*.

5.389 When I asked about the number of problem solving meetings, [REDACTED] stated that such meetings were informal and, therefore, not part of the formal grievance procedure. There were several in this case because, [REDACTED] claimed, Martin Morton would leave the meeting and then shortly afterwards say *"...that's not what was agreed..."* [REDACTED] also pointed out that, if it proved to be the case that this informal approach was not producing a result, then Unison would advise the employee to go straight to the formal procedure. In Martin Morton's case, the formal procedure commenced with a meeting on 5 February 2007.

5.390 In the light of these informal problem solving meetings Martin Morton stated that by 4 January 2007, he had emailed [REDACTED] to say *"...I simply have had enough of the stalling and skirting round the "unethical" and "illegal" and collusive issues. In response the [REDACTED] accepted that the informal approach had not succeeded and asked Martin for "... clear and succinct details of the grievance issues you wish to be addressed..."* Subsequently Martin Morton produced a list of 10 questions which formed the basis of the formal grievance hearing on 5 February 2007.

(ii) No statutory powers to intervene

5.391 Martin Morton has stated that he was told by [REDACTED] that DASS had no statutory powers to intervene in matters relating to supported living service providers.

5.392 When I spoke to [REDACTED] he stated that the registration and regulation of such private sector service providers was no longer a matter for the local authority, but was a service which was vested in CSCI and it was a matter for them to take the appropriate action needed to address Martin's concerns. In circumstances such as those being considered, DASS only had powers which covered the contractual basis of their relationship with service providers. In this regard, [REDACTED] wanted Martin Morton to provide him with evidence to support his concerns and the allegations he was making against certain service providers. [REDACTED] reflected that, at the time, one of these service providers were already engaged in litigation proceedings against the

Council and, therefore, would challenge any action which [REDACTED] might take in this case. [REDACTED] also stated that Martin Morton was demanding that the authority took action without the necessary evidence to justify statutory intervention and in part without the statutory power, which now rested with CSCI.

(iii) Director is not accountable to Martin Morton

5.393 The first formal meeting to consider the complaints Martin Morton submitted on 18 September 2006 was held with [REDACTED] and [REDACTED] on 5 February 2007. The notes of that meeting indicate that [REDACTED] said *"...Today is about hearing your grievance...Accounting to you is not going to happen. There are circumstances when staff should be told why X has not happened, but it should be covered through supervision. (The) Department may hide behind a bigger picture which you can't be told about. You feel that has not happened to enable you to feel comfortable not compromised."*

5.394 Martin Morton has stated that he felt so much frustration with the grievance process during this meeting that he requested severance. In return, [REDACTED] asked [REDACTED] to explore the possibility of drawing up a Compromise Agreement to cover the terms of Martin's possible departure. However, subsequent consideration of this option was put on hold pending the outcome of Martin's grievance complaints.

5.395 Following this meeting, Martin Morton contacted [REDACTED] to register his *"dissatisfaction with the grievance process"* since, he said, *"the [REDACTED] has had 6 months to address my concerns and has summarily failed to do so"*. Martin advised him of *"my intention of invoking the whistleblowing procedures in terms of unreasonable delay and as a means of addressing my concerns"*.

Findings

5.396 Martin Morton submitted his formal grievance *"...having exhausted supervision and key issues processes..."* this phrase is a reference to the Council's grievance procedure: formal stage 1. Martin Morton thought his grievance was at the formal stage. However, initially, DASS attempted to deal with this through problem solving meetings which were not regarded as part of the formal grievance procedure, but after 3 months a resolution had not been found and so a formal grievance hearing was called on 5 February 2007. Consequently, it took approximately 5 months for the first formal grievance hearing to take place. I believe this is far too long a delay and bearing in mind that DASS did not respond initially until after Martin Morton referred his case to the [REDACTED], I take the view that it is inappropriate to allow the formal process to take so long to be applied.

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- 5.397 This delay in the formal process resulted from the nature of the differences between the parties in their informal discussions. Martin Morton wanted an investigation of his claims while [REDACTED] maintained that DASS had no statutory process to conduct such an investigation against service providers or, indeed, the necessary evidence to justify statutory intervention. His view was that he had referred the issues to CSCI for them to investigate.
- 5.398 Good practice dictates that the essence of successfully dealing with grievances is to find a resolution i.e. a means to seek closure, as speedily as possible. It seems that there was no effective dialogue to this end in DASS' informal approach.
- 5.399 It is also important to note that Martin Morton has stated that he submitted his formal grievance under two procedures i.e. whistleblowing and grievance. In fact, his submission states *"In accordance with Metropolitan Borough of Wirral grievance procedure, I request an interview with [REDACTED] to discuss unresolved matters in relation to a fundamental breach of trust and lack of confidence emanating from my experience working within DASS..."* His submission also said *"...Indeed, I have been faced with the dilemma as to whether I personally would be better served if this statement was considered under the Whistleblowing procedure. However, I would like the opportunity to discuss the matter within the department from which the concerns emanate before considering any further action..."* His submission went on to specify his concerns over a number of service and employment issues.
- 5.400 This reference to two separate procedures was not recognised by DASS officers and Martin Morton's complaints were all treated as a grievance submission. In light of the service issues in his complaints, I believe this was inappropriate: there should have been a separation of the two parts of his case at the outset. This is discussed more fully in section 6.
- 5.401 When I discussed this with [REDACTED] he stated that he thought Martin Morton perceived himself to be a whistleblower and that [REDACTED] had considered the separation of Martin Morton's complaints. He also said that they had been separated, but not by using separate procedures. [REDACTED] stated that he didn't want to get caught up in the minutiae of procedure, as DASS needed a vehicle to get Martin's complaints heard by the Elected Members and this principle had been achieved via use of the grievance procedure. He pointed out that Martin Morton's service concerns had been dealt with externally by them being passed to CSCI.

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5.402 Consequently I have found that there was an inappropriately long delay in DASS' dealing with Martin Morton's formal grievance. Also, while [REDACTED] may have been correct in his stance on the lack of statutory process available to him, I think his position wasn't helped by his view that he was not accountable to Martin Morton. It seems to me that this position ignores the issue of public accountability via the Council's whistleblowing arrangements and this aspect did not get picked up because there was no separation of Martin Morton's allegations into service and employment issues. This resulted, in my view, in him being denied due process in the consideration of his claims.

Conclusion: Allegation 3(A)

5.403 I have concluded that Martin Morton was denied due process by DASS' consideration of his formal grievance/whistleblowing complaints as he has claimed.

Allegation 3(B)

DASS discussion/correspondence with Martin Morton re: his two grievance appeal hearings on 23 May and 2 July 2007 i.e.

- (i) DASS' request for a postponement of the hearing on 23/5/07;
- (ii) No consideration of a Whistleblowing investigation;

Statement

5.404 Martin Morton attended the Appeals Sub-committee hearing on 23 May 2007 with his wife in support. He reflected on what he felt was a very difficult day which in the event had proved to be inconclusive since the hearing had been adjourned by Elected Members. He indicated that after he had submitted his case papers to the Committee Secretary he received a message on 18 May 2007 indicating that DASS had made a request for a postponement of the hearing due to the contents of the bundle Martin Morton had supplied. Martin declined the request and the hearing went ahead. He responded to the Committee Secretary and registered his "*deep despair*" at this request.

5.405 In the event the appeal hearing was adjourned without hearing any submissions and the parties had a meeting on 30 May 2007, at the Panel Member's request, "*in order to sort it out*" in the hope that it may not come to a full hearing; the Panel had wanted [REDACTED] to be able to answer the 10 questions Martin had put to him.

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5.406 The notes of the meeting on 30 May 2007 indicated that the discussion addressed Martin Morton's original grievance and the resolution Martin wished to see, as evidenced by his reference to the issues listed (a)-(e). The discussion did not appear to address all the issues included in Martin Morton's bundle of papers issued to the Appeals Panel e.g.:

- Questions 1-10;
- Fairer Charging/Special Charging Policy;
- Whistleblowing;

Consequently, I asked Martin Morton to clarify the reasons for this and he stated that he felt [REDACTED] was "steering me down a 'limited' route. [REDACTED] wanted to avoid the real issues"...and was "trying to bamboozle me". Martin Morton said he was being treated in a detrimental manner because he was a whistleblower.

5.407 Martin Morton emphasised that, at the meeting on 30 May 2007, there was no mention of the full list of complaints e.g. his 10 questions, "...because [REDACTED] controlled the show" and Martin had been on his own. Martin explained that he "gave up" trying to explain to [REDACTED] because he felt he would be able to "say what I wanted to say to Elected Members". Consequently, Martin said he was more passive at the meeting on 30 May 2007.

Comments

(i) DASS' request for a postponement

5.408 I discussed this allegation with [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.409 I referred [REDACTED] to the correspondence concerning the grievance appeal hearings on 23 May and 2 July 2007 and the request made by DASS for a postponement of the hearing scheduled for 23 May 2007 and [REDACTED] could not recall why the request had been made. He thought it may have been due to the pressured environment which exists at Director level.

[REDACTED]

5.410 I also referred [REDACTED] to this correspondence and he suggested that this request had been made after the management side had received Martin Morton's bundle of papers and felt, in light of the extent of the bundle, that they needed

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more time to read the papers. In the event, the appeal proceeded on the day.

- 5.411 I asked [REDACTED] about the request which he had received from the [REDACTED] of [REDACTED] for a postponement of Martin Morton's grievance appeal. [REDACTED] did not recall any conversation with any colleagues in DASS about this request. However, he said it was not out of the ordinary for one party or the other, who were involved in grievance hearings, to request a postponement. [REDACTED] explained that any request for a postponement has to be agreed by both parties and, in this case, Martin Morton had not agreed so the hearing went ahead as planned on 23 May 2007. [REDACTED] was not aware of the reason for the request but suggested it may have been connected with the size of the bundle of papers which had been issued for the hearing. [REDACTED] indicated that the bundle was sent out on 11 May 2007 i.e. up to two weeks before the hearing date.

Findings

- 5.412 It is clear that the bundle of papers submitted by Martin Morton was extensive. The papers were issued up to two weeks before the appeal hearing and it was one week later that DASS made their request, it appears, without explanation. Bearing in mind the nature of working relationships between Martin Morton and his senior managers at this stage, it is unfortunate that there was no conversation with him, or [REDACTED], to explain the reason for the request.
- 5.413 However, as [REDACTED] states, it is not unusual in grievance appeals for one party or the other to ask for a postponement and this is only granted if it is mutually agreed. In the event Martin Morton declined the request and the appeal hearing went ahead.
- 5.414 In the circumstances I do not believe that this is an example of bullying behaviour which has denied Martin Morton due process in the consideration of his grievance.

(ii) No consideration of a Whistleblowing investigation;

- 5.415 I discussed with [REDACTED] Martin Morton's letter of appeal to the [REDACTED], dated 2 March 2007 which stated:-

"Re. Martin Morton – Grievance/Whistleblowing

...The matters pertaining to my grievance which remain outstanding relate to the following:

- *Unethical/Illegal practice including widespread and prolonged collusion with abuse*
- *Gross Maladministration*
- *Financial Mismanagement*
- *Bullying*

...I now feel that a resolution to my grievance is for my concerns to be subject to scrutiny by an external body, preferably the Audit Commission..."

██████████ could not recall the letter. However, he acknowledged that it was clear that four of Martin Morton's complaints were based on service issues while one was based on employment issues. He also agreed that it was clear that Martin was seeking an investigation, preferably by the Audit Commission. He confirmed that his recollection was that at the appeal hearing there was an emphasis on the service provider issues and the referral to CSCI; the Audit Commission was not on ██████████ mind.

5.416 I asked ██████████, bearing in mind Martin Morton's reference to whistleblowing, whether ██████████ had perceived Martin to be a whistleblower and whether he had considered separating Martin's complaints into whistleblowing and grievance issues. ██████████ stated that he thought Martin Morton perceived himself to be a whistleblower and that he ██████████ had considered the separation of Martin's complaints. He also stated that they had been separated, but not by using separate procedures. ██████████ said that he "didn't want to get caught up in the minutiae of procedure", as the Department needed a vehicle to get Martin's complaints heard by the Elected Members and this principle had been achieved via the use of the grievance procedure. He went on to explain that Martin's service concerns had also been dealt with externally by them being passed on to the Commission for Social Care Inspection (CSCI).

5.417 I also discussed with ██████████ the notes of the problem solving meeting held on 30 May 2007. During these discussions ██████████ stated that service issues of the kind raised by Martin Morton were not a legitimate area for a grievance. Legitimate areas included issues about employment, conditions and management and were separate from the issues about XXX and other service providers. He stated that Members were clear that Martin Morton could challenge, but these service issues were not an area for a grievance. I asked ██████████, if it was OK to challenge, but the issues were not a grievance, then how would Martin

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Morton put his challenge into effect? [REDACTED] replied by indicating that anyone can challenge: they can write to their Chief Officer.

5.418 I also asked [REDACTED], if it was his view that Martin's complaints were not a grievance, then why go through the grievance procedure? [REDACTED] confirmed that Martin did have some legitimate grievance concerns and this is why his case was treated as a grievance.

5.419 In [REDACTED] letter of 29 June 2007 to Martin Morton, which, inter alia, confirmed the outcome of the meeting on 30 May 2007 he said *"...In summing up, it seems clear that despite all our efforts it is not possible to resolve your grievance. Your conviction that the Department is wrong is so strong that no explanation given to you and no suggestion as to how to resolve your grievance is acceptable to you..."*. I pointed out that there was no mention of the Council's whistleblowing procedure in the letter and, in the light of these comments I asked [REDACTED] if he had lost sight of good practice. [REDACTED] replied by stating that he had not lost sight of good practice. On the contrary, [REDACTED] said staff of DASS would say that he treated complaints against the Department as gifts: resolving them helped the Department to improve. In addition, [REDACTED] explained that he would also help complainants *"to go where they need to e.g. CSCI or the Ombudsman, as necessary"*. He felt sure he would have said this to Martin Morton. In [REDACTED] view, Martin Morton's complaints were about an independent service provider who was registered with CSCI and consequently his complaints were referred to CSCI in order to meet the moral responsibility which Martin claimed existed.

[REDACTED]

5.420 I discussed with [REDACTED] the notes of the problem solving meeting held on 30 May 2007. I asked [REDACTED] for his view of [REDACTED] statement that *"... you can challenge..."* and, if the grievance procedure was not appropriate, how such a challenge would be made. [REDACTED] responded by indicating that he was not clear about [REDACTED] point here. He thought it might possibly relate to the supervisory process, where DASS managers and staff have regular "supervision sessions" when such matters could be discussed. He stated that there was no discussion, at this meeting, of an investigation being a way forward in achieving a resolution of Martin Morton's grievance. When I asked [REDACTED] how he thought a resolution to Martin's grievance would be achieved, he indicated that this could be done by the management side reporting that his complaint had been looked at.

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5.421 [REDACTED] had drafted [REDACTED] letter of 29 June 2007 which confirmed DASS' view of Martin Morton's original grievance. When I asked him, [REDACTED] reiterated that using the Council's whistleblowing procedure in Martin Morton's case to address the service issues he had raised had not occurred to him. When I pointed out that Martin Morton wanted an investigation of his complaints, [REDACTED] reiterated that he had not considered going down this route within the Council's whistleblowing policy either internally via Internal Audit or externally via the Audit Commission. He accepted that it appeared in this letter that the department may have lost sight of good practice on this point of how such service concerns and complaints may legitimately be addressed.

5.422 When asked for his view of whether good practice was followed and justice was served in this case, [REDACTED] went on to suggest that, in the light of the experience of Martin Morton's case, lessons had been learnt by the authority and that was why the policy advice re Grievances/Whistleblowing had changed in 2009.

Findings

5.423 The issue under consideration here is Martin Morton's request for an external investigation of his complaints. His letter of appeal to the [REDACTED] [REDACTED] was clear: it was headed "grievance/whistleblowing" and listed a mix of both service and employment issues. It also stated that Martin Morton wanted his concerns to be subject to scrutiny by an external body, preferably the Audit Commission.

3.424 It seems that a copy of the letter was issued with Martin Morton's bundle of pages for the appeal hearing but neither [REDACTED] nor [REDACTED] could recall seeing it. However, as far as [REDACTED] was concerned the Audit Commission was not on his mind.

5.425 [REDACTED] made his view clear that service issues are not a legitimate subject for a grievance and I agree with him. Given this is his view, I think it is surprising that these issues were not separated from Martin Morton's legitimate subjects for a grievance i.e. his employment concerns. It appears that the reasons for this were based on [REDACTED] concern not to "get caught up in the minutiae of procedure" linked with the need to get Martin Morton's complaints heard by Elected Members.

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5.426 In my view this is both contradictory and mistaken. It is contradictory because [REDACTED] has maintained that service issues are not suitable for a grievance hearing: so why submit them to one? Also it is clear from the conduct of the appeal hearing on 2 July 2007, which is discussed more fully under Allegation 4(B), that [REDACTED] made this view known to the Panel: he did not believe they should be listening to Martin Morton's service complaints and said so.

5.427 It is mistaken because there are good reasons for having separate procedures to deal with such separate concerns. First, the Appeals Sub-Committee, in its grievance appeal format, does not have any jurisdiction to consider service matters: these are for the Cabinet's appropriate Lead Member to deal with. Secondly, the whistleblowing procedure, which is the correct procedure for dealing with service matters, does not involve Elected Members in any appeals capacity.

5.428 Moreover, [REDACTED] alternative to the grievance appeals panel considering Martin Morton's service complaints was to refer them to CSCI for an investigation because, he stated, they had the jurisdiction to conduct such an investigation. In [REDACTED] view Martin Morton's complaints were about an independent service provider who was registered with CSCI and consequently Martin's complaints were referred to CSCI in order to meet the moral responsibility which Martin Morton claimed existed. However, I believe this stance misses the point of Martin's grievances. As his letter of appeal to the [REDACTED] [REDACTED] makes clear, Martin Morton's complaints referred to:

- Unethical/immoral practice...;
- Gross maladministration;
- Financial mismanagement; and
- Bullying.

These complaints were not just focussed on one independent service provider i.e. XXX, they also covered Martin Morton's concerns over the Council's own practice regarding Fairer Charging and made reference to the "Special Charging Policy". Martin's bundle of papers submitted with his grievance appeal, expanded these points and included the 10 questions he wanted the [REDACTED] to answer. Question six related directly to DASS' approach to Fairer Charging.

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- 5.429 Consequently for [REDACTED] to suggest that Martin Morton's service complaints were about service providers and, in particular, XXX and, therefore, could only be investigated by CSCI is, I believe, mistaken. It seems to me that [REDACTED] was unwilling to investigate the other aspects of Martin's service complaints re. Fairer Charging and did not do so. I believe this was inappropriate and was a denial of due process in relation to Martin Morton's grievance complaints.
- 5.430 It is also worth remembering that it was this lack of an investigation of these other aspects i.e. Fairer Charging that subsequently became the focus of a PIDA investigation by the Audit Commission and a report by the Chief Internal Auditor.
- 5.431 However, when I spoke to [REDACTED] about these matters it was clear that an investigation of Martin Morton's service complaints using the Council's Whistleblowing policy hadn't occurred to him: he thought a resolution to Martin Morton's grievance could be achieved by the management side reporting that his complaint had been looked at.
- 5.432 When I asked him who should provide HR advice on appeals procedures to both the employee concerned and the Departmental Director, [REDACTED] accepted that this was the role for the Departmental HR officer.

Conclusion: Allegation 3(B)

- 5.433 I have concluded that:-

- (i) I do not believe that DASS' request for a postponement of the grievance appeal hearing on 23 May 2007 is an example of bullying behaviour which has denied Martin Morton due process in the consideration of his grievance; and
- (ii) DASS' lack of consideration of Martin Morton's request for a Whistleblowing investigation is, I believe, an example of inappropriate behaviour which has denied him due process in the consideration of his grievance.

Allegation 3(C)

The problem solving meeting with [REDACTED] and subsequent correspondence with Martin Morton between November 2007 - January 2008, to discuss his formal grievance re. having no work to do i.e. DASS' alleged failure to deliver:-

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- (i) a job description;
- (ii) a discussion of working styles between [REDACTED] / Martin Morton; and
- (iii) an agreed follow-up meeting;

Statement

5.434 In November 2007 Martin Morton submitted a grievance in order to address issues of DASS' alleged failure to provide an adequate workload and job description. At a problem solving meeting on 28 November 2007 it was agreed that:

- A job description would be provided and a work plan would be devised;
- Both parties would look at working styles/working together i.e. [REDACTED] / Martin Morton;
- There would be a follow up meeting one month later to carry out a review.

5.435 However, Martin Morton claimed that none of these things happened, so he wrote to the [REDACTED] [REDACTED] on 17 January 2008 requesting that his grievance should be taken to a Members' Appeal. Subsequently, Martin was offered a problem solving meeting with senior colleagues in DASS and a series of Departmental follow-up meetings took place but they had not resolved the issue raised i.e. a lack of workload.

Comments

5.436 I discussed this allegation with [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.437 [REDACTED] recalled that she was clear about trying to distance herself from Martin Morton at the time of this meeting. She remembered that Martin appeared to be dejected but was then working in a large busy office: he had his Task List and, she felt, he had plenty to do.

5.438 So far as the meeting on 28 November 2007 was concerned, [REDACTED] confirmed that she was then the [REDACTED] of a new division in the Department and Martin Morton's work fitted best with [REDACTED]. There were other line managers who were more familiar with the requirements of operational management and who would have better fitted the role as Martin's line manager, but allocating Martin and his work to them, would not have fitted the new organisation structure. It was too early in the new set up to make exceptional arrangements.

- 5.439 [REDACTED] suggested that it was known that Martin Morton was difficult to manage and DASS needed someone who didn't deviate and would stick to management by the letter. She felt that giving Martin too much flexibility did not work. [REDACTED] reiterated her recollection of the discussion of working styles. [REDACTED] management style was not the best match for Martin Morton's working style. [REDACTED] also recalled a memo to her from [REDACTED] dated 23 January 2008 which reflected the point which his working relationship with Martin Morton had reached. [REDACTED] memo said "...I feel I have to consider my own position..." and "...unless the situation changes, I am unwilling to continue to supervise him..."
- 5.440 I referred [REDACTED] to her letter of 9 January 2008, which confirmed the outcome of the problem solving meeting on 28 November 2007. She was not sure why it had taken so long to send the letter. However, she said she had been waiting for the notes of the meeting from her HR colleague and there had been the Christmas break in between.
- 5.441 [REDACTED] confirmed that a job description had not been provided. She was, she said, expecting [REDACTED] to do this, but in the light of [REDACTED] memo of 23 January 2008 they had reached a complete impasse. She felt that [REDACTED] was too frightened to do anything because in Martin Morton's eyes it was going to be wrong. Consequently [REDACTED] started to remove himself from the situation. As a result, no job description had been produced and there had been no meetings between [REDACTED] and Martin to discuss working styles. Consequently, no follow-up meeting within one month, as agreed on 28 November 2007, had been arranged. She said that, by this date, managers had become frightened of the situation and whether they were next to be subject to a complaint and she too was also at her "wits end" over the matter.
- 5.442 I asked [REDACTED] about [REDACTED] letter to Martin Morton, dated 1 February 2008, in which he confirmed the arrangements for a formal grievance hearing on Wednesday 20 February 2008 to consider the issues raised on 28 November 2007. [REDACTED] confirmed that she had not been involved in the preparation for the meeting on 20 February 2008. However, she said that [REDACTED] had asked if [REDACTED] had supervisory notes of his meetings and discussions with Martin Morton and she was surprised when she had found that these did not exist.

[REDACTED]

5.443 [REDACTED] confirmed that he had written to [REDACTED] on 23 January 2008 because of the difficulties he was having in managing the situation. Having set out his view of the situation at length [REDACTED] confirmed that he concluded by saying "...unless the situation changes, I am unwilling to continue to supervise him..." [REDACTED] said he had not taken the decision to write this letter lightly: it was, he said, borne out of a sense of frustration and because he was at a total loss as to what to do. In the event, Martin Morton went off sick again and did not return.

5.444 I asked [REDACTED] about the notes of the meeting on 28 November 2007 where he is quoted as saying *If this is to work henceforth, may have to change part of how I work... There are issues about my behaviour/working style...*. He also felt that, on reflection, perhaps he should have challenged Martin Morton on whether he needed to change his style too. [REDACTED] suggested that it could appear that he was being too self critical in appearing to concede that it was all his own fault. He stated that management was a two-way process and while he accepted that his management style was not the most appropriate here, he also felt that Martin Morton had to take some responsibility too.

5.445 I referred [REDACTED] to Martin Morton's letter of 17 January 2008 where he made it clear that none of the action points agreed on 28 November 2007 had happened. [REDACTED] commented that he had been in the course of preparing the job description and had sent a draft to [REDACTED] and [REDACTED] on 5 December 2007 for their comments. However, at the time of Martin's letter of 17 January 2008, [REDACTED] had not had a response. He had not pursued this lack of a reply with either [REDACTED] or [REDACTED].

5.446 On the question of the follow-up meeting, [REDACTED] acknowledged that this had not happened. He accepted that, in the circumstances, Martin Morton was justified in feeling that DASS were not delivering on their promises. [REDACTED] also accepted that, as Martin's [REDACTED], he was in a pivotal position to address these issues, but he had not been proactive or taken the initiative to make things happen.

[REDACTED]

5.447 [REDACTED] confirmed that he was aware of difficulties between Martin Morton and his managers, but he was not aware of the content of those difficulties. He felt that there were difficulties with their working relationships and would expect the

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Department to follow an informal approach, such as that reflected in the problem solving meeting on 28 November 2007.

5.448 He recalled that he offered to chair a problem solving meeting with Martin Morton because of these apparent difficulties in working relationships: he suggested that because of the situation, [REDACTED], as Martin's [REDACTED], might not have been in a position to settle those difficulties.

5.449 [REDACTED] went on to suggest that Martin Morton was "falling out" consistently with his managers and, consequently, an offer to help resolve matters, necessarily would have to come from outside Martin's branch of the Department. [REDACTED] stated that he had agreed this approach with [REDACTED], and probably discussed it with [REDACTED].

5.450 [REDACTED] had attended the problem solving meeting on 28 November 2007 and had taken the notes and sent them to [REDACTED] for signing off on 13 December 2007.

5.451 I asked [REDACTED] if there had been any offer of HR Support for Martin Morton and she indicated that she was not aware of any discussion along these lines. She felt that Martin could have come to her for advice on procedures but she had not detected during the meeting that Martin was getting upset or was in need of any further advice or support. She also confirmed that, had he wished to do so, bearing in mind the nature of his grievance, he could have arranged to see one of the Department's Bullying and Harassment Contact Officers. [REDACTED] felt that it was up to the employee to request such support.

Findings

5.452 [REDACTED] chaired the problem solving meeting on 28 November 2007 but she was trying to distance herself from Martin Morton at the time of this meeting. She said that Martin Morton had his Task List so he had plenty to do. However, this meeting was considering his grievance about a lack of workload. Clearly these were completely opposite perceptions.

5.453 In considering this situation [REDACTED] confirmed her view that the management side needed to take a strict and tight line with managing Martin who was felt to be difficult to manage i.e. someone who would stick to management by the letter. However, for the organisational reasons [REDACTED] made clear, this task fell to [REDACTED]. Given [REDACTED] management style and the poor state of the working relationship

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between himself and Martin Morton, it seems that this things would only get worse.

5.454 [REDACTED] was, no doubt, "playing it by the book" but as [REDACTED] said, his management style was not the best match for Martin Morton's working style and this was a recipe for a further deterioration and then breakdown in working relationships. In fact it didn't take much longer for this to happen because [REDACTED] wrote his memo to [REDACTED] on 23 January 2008.

5.455 When I asked her, [REDACTED] was not sure why it had taken so long to send her letter confirming the outcome of the meeting on 28 November 2007. She stated that no job description had been produced by [REDACTED] because, in the light of [REDACTED] letter of 23 January 2008, they had reached an impasse. (It is worth noting that [REDACTED] has claimed he did produce a job description and sent a draft of it to [REDACTED] on 5 December 2007 but never got a response). At the same time, there had been no discussions between [REDACTED] and Martin Morton about working styles and no follow up meeting had been promised.

5.456 It seems that the job description and discussions on working styles were [REDACTED]'s responsibility while the follow up meeting was [REDACTED] responsibility. The absence of all of these things happening suggests to me that DASS had failed to deliver on its promises to Martin Morton and, instead, had demonstrated a lack of commitment to resolving his grievance. This is clearly illustrated by not sending out the notes of the meeting on 28 November 2007 until January 2008 when a review meeting had been promised for one month later.

5.457 It is vital to remember that one of the keys to successfully resolving a grievance is a commitment not only to address the issues involved, but also to be seen to be doing so, in order to secure closure. I believe it is clear that his commitment was lacking in how this grievance was dealt with.

5.458 It is also worth noting the role of the HR function in such matters. In this particular case, [REDACTED] said Martin Morton looked dejected: this reflects the very low ebb of working relationships. However, there was no consideration of offering any welfare support for Martin Norton. At the same time, the HR function did not pursue DASS' lack of delivery of the promises made to Martin Morton; their role was reactive and not proactive. This seems to reflect the culture in the Department.

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5.459 It is also important to note the role played by Martin Morton in this situation. As [REDACTED] has suggested Martin was known as someone who was difficult to manage. This may be true, certainly by the time these events took place, but as mentioned earlier, this has not always been every senior manager's view. As [REDACTED] noted, it seems clear that the breakdown in working relationships occurred over a long period of time. It has also been said that Martin Morton is passionate about service user's rights to the point of his commitment being more than most. Clearly this does not suggest he is either right or wrong about issues, but it can mean that his views on professional situations and events can be at one end of the continuum and managers can find this to be particularly challenging. This does not mean that a successful working relationship cannot be achieved. What it requires, I believe, is for managers to be particularly skilful and well organised in their working relationships with Martin in order to retain their focus and commitment to the task.

5.460 Unfortunately, in this particular case, by the end of January 2008, [REDACTED] was at her "wits end", [REDACTED] appeared to be removing himself from the situation and Martin Morton went off sick and did not return. Clearly there was a total breakdown in working relationships and a fundamental breach of trust and confidence between the parties.

Conclusion: Allegation 3(C)

5.461 I have concluded that DASS' failure to deliver (i) a job description; (ii) a discussion of working styles between [REDACTED] [REDACTED]/Martin Morton; and (iii) an agreed follow-up meeting to discuss his formal grievance re. having no work to do is a denial of due process in relation to the consideration of Martin Morton's grievance and whistleblowing claims.

Allegation 3(D)

Discussions with Martin Morton at the grievance hearing on 20 February 2008, attended by [REDACTED] and [REDACTED] and the circumstances which led to the signing of a Compromise Agreement with an alleged "gagging clause" prior to his leaving the Council's employment in April 2008;

Statement

5.462 Martin Morton has stated that after the breakdown of the informal discussions over his grievance about having no work to do he had a formal meeting with [REDACTED] and [REDACTED] on 20 February 2008. The meeting had been arranged as a formal hearing of his grievance but, in the event, they discussed details

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of a severance package and the signing of a Compromise Agreement. Martin was now being advised by [REDACTED] a friend who drew up the initial draft of the Compromise Agreement and advised Martin to sign it. Following negotiations, [REDACTED] finally offered a sum of [REDACTED] in full and final settlement of Martin's claims, which Martin had accepted. Martin stated that there had been a fundamental breach of his faith and trust in Wirral Council as his employer.

5.463 Martin Morton also stated that at this meeting on 20 February 2008 [REDACTED] initially offered him [REDACTED] to "shut up and go away". This was increased to [REDACTED] and finally to [REDACTED] on the condition that Martin signed a Compromise Agreement with a "gagging clause". Martin felt this raised a number of questions i.e. a) What was he ([REDACTED]) gagging Martin Morton about?; b) Why was he ([REDACTED]) offering Martin Morton double the amount the previous [REDACTED] offered?; c) What budget did the money come from?.

5.464 When the Compromise Agreement was handed to Martin's legal adviser her advice was that he had a good claim for constructive dismissal. He stated that she said if the Council wanted a "gagging clause" they would have to pay separately. However, because Martin had been told that [REDACTED] was the upper limit for DASS, the Compromise Agreement had reflected a figure of [REDACTED] plus [REDACTED] for the "gagging clause". He also stated that his legal adviser had said that a settlement for a successful constructive dismissal claim for whistleblowing would be uncapped: however, Martin said that by this time he "wanted out because an ET claim would kill me", so he decided to sign the Compromise Agreement "under extreme duress after being admitted to hospital the previous week with chest pains".

Comments

5.465 I discussed this allegation with [REDACTED], [REDACTED], Martin Morton's friend who was present at the meeting on 20 February 2008, [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.466 I asked [REDACTED] about the reasons for drawing up the Compromise Agreement and whether it contained "... a gagging clause". He stated that [REDACTED] had initiated the idea of a Compromise Agreement and the practical arrangements were not made by himself but by [REDACTED] and [REDACTED]. [REDACTED] restated that as there was a fundamental breakdown in working relationships with Martin Morton, there was "...nowhere else to

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go", [REDACTED] also confirmed his understanding that much of the Compromise Agreement followed a standard format.

- 5.467 When asked if Martin Morton was perceived to be a whistleblower [REDACTED] said that he was by the time he ([REDACTED]) became involved because by that time the Audit Commission had become involved. He suggested that it became apparent that the Council needed to recognise that there was a mixture of whistleblowing and grievance claims in Martin Morton's complaints and, subsequently, [REDACTED] had issued guidance to all managers on this point re the need to separate whistleblowing and grievance complaints. When I suggested that a Compromise Agreement is usually used when the employer is vulnerable and it is advisable/economical to settle the case [REDACTED] referred to an email between himself, [REDACTED] and [REDACTED] where he stated "... I do not have confidence that the Department would be able to defend all Mr Morton's allegations..." The Compromise Agreement was, he said, a shared outcome so Martin did not leave under duress.
- [REDACTED]

- 5.468 [REDACTED] confirmed that it was [REDACTED] who had initiated this discussion: he had stated that Martin Morton could make a claim for constructive dismissal and in these circumstances a Compromise Agreement with a satisfactory settlement figure seemed a suitable way forward. [REDACTED] emphasised that Martin Morton was under no duress in considering a Compromise Agreement. He also pointed out that the insertion of Clause 9 in the agreement re confidentiality, did not prevent Martin Morton from whistleblowing to the appropriate agencies on his concerns. Consequently, the settlement figure was not a bribe as described by Martin Morton.
- [REDACTED]

- 5.469 [REDACTED] said that Martin Morton "was in a terrible state" on the day. He stated that [REDACTED] had said that Martin had had a good offer from [REDACTED] and he should take it and go. [REDACTED] indicated that Martin was in tears and his morale had been extremely low in the days before the meeting. In these circumstances, [REDACTED] felt that his only course of action was to negotiate on Martin's behalf a reasonable settlement figure for his departure. It was clear to him that there was no way in which Martin could go back to work for DASS. He said that he felt there was a complete breakdown of trust and confidence between the two parties.

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5.470 [REDACTED] also stated that he thought [REDACTED] and [REDACTED] had already decided their position on this issue prior to the meeting on 20 February 2008. He said that Martin was correct in his claim that there was no discussion of his concerns and agreed that the management side were keen to see him gone: he stated that [REDACTED] had said that Martin "*had been a thorn in our side and we need you to leave*". [REDACTED] also confirmed that there was no discussion at the meeting of whistleblowing being an alternative means of securing closure on Martin's complaints. He confirmed that he had had no thoughts at the time about Martin using the whistleblowing procedure for any of his concerns and that by this point Martin Morton was so convinced that everyone was against him that even an internal investigation by Internal Audit would not have satisfied him. Things had gone too far. When discussions turned to the idea of using a Compromise Agreement Martin Morton did not speak against the idea of leaving with such an agreement in place.

5.471 [REDACTED] indicated that he had drafted the Compromise Agreement and sent it to [REDACTED]. He had not considered there to be any incompatibility between the nature of Martin Morton's allegations and the use of such an agreement with, as normal, a settlement figure included. There was no gagging clause included in the draft which [REDACTED] had sent to [REDACTED]. However, since it is a requirement for a Compromise Agreement to be signed by a legal representative on behalf of the employee, [REDACTED] was obliged to "pass on" the signing arrangements to Martin and his lawyer. Consequently, [REDACTED] was not involved in any discussions about the Compromise Agreement or any amendments to his draft, after he sent it to [REDACTED].

5.472 [REDACTED] had signed the Compromise Agreement and confirmed he had been closely involved with [REDACTED] in drawing up the specific clauses which had been added to the standard text. He said that Clause 9 in particular had been added to ensure that, while the usual protection of a Compromise Agreement was applied to both parties, especially that concerning confidentiality, this clause did not affect Martin Morton's right to take his whistleblowing complaints to the appropriate external agencies. Consequently [REDACTED] felt that the terms of the Compromise Agreement struck the right balance in that they protected the Council's interests but did not prevent Martin Morton from whistleblowing. He thought it had been appropriate to apply a Compromise Agreement in this case because [REDACTED] and DASS as a whole needed the benefit of a clean break with Martin Morton's case. [REDACTED] was aware of the breakdown in working relations between Martin Morton and his

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managers and he felt that the whistleblowing aspects were a secondary consequence of this breakdown. The whole situation was just not productive.

5.473 I referred [REDACTED] to a statement made by Martin Morton, that *"If we consider [REDACTED] involvement in my grievance appeal hearing and therefore his knowledge of the case, he should have been advising the Council that it was unethical and perhaps illegal to gag someone who was a) reporting abuse and b) acting in the public interest. In the real world if you pay someone to be silent about an illegal act it's simply called a bribe..."*

5.474 [REDACTED] rejected this line of argument. He felt that the Compromise Agreement was in the Council's best interests because there had been an irretrievable breakdown in working relationships. He suggested that the Council was vulnerable to a constructive dismissal claim, as was reflected in correspondence he had exchanged with [REDACTED], based on managers' comments such as *"Martin, what do you actually do"* and *"Martin, you're just a dogsbody"*. [REDACTED] was conscious that Martin Morton's appeal hearing never got to the bottom of these comments made to Martin.

[REDACTED]

5.475 [REDACTED] confirmed that he had been involved in discussing the final settlement figure and may have been involved in drafting the agreement itself. He suggested that Clause 9 which referred to the issue of confidentiality did not prevent Martin Morton from referring his claims to the appropriate whistleblowing agencies. When asked if he thought the clause could be perceived as a "gag", as claimed by Martin Morton, [REDACTED] said he thought it was a matter of interpretation. When read as it had been intended it was not a gag. He also recalled that [REDACTED] had called [REDACTED] to discuss the settlement figure because the Council was vulnerable to a constructive dismissal claim from Martin Morton. Consequently, [REDACTED] had been happy with the final settlement figure which had been agreed.

Findings

5.476 Martin Morton has stated that as a whistleblower he was concerned that the use of a Compromise Agreement was inappropriate because it contained a settlement figure of [REDACTED] which included a sum he regarded as a bribe to keep silent about his whistleblowing allegations i.e. a "gag".

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5.477 By 20 February 2008 everyone agreed that there was an irretrievable breakdown in working relationships between Martin Morton and his employer, as represented by DASS. The meeting on 20 February 2008 was initiated as a formal grievance hearing but there was no discussion of Martin Morton's grievance issues because [REDACTED] and [REDACTED] agreed, for different reasons, that Martin could not go back to working for DASS. Hence, [REDACTED] initiated discussions about drawing up a Compromise Agreement and he negotiated a settlement figure on Martin Morton's behalf.

5.478 It is clear that [REDACTED] drafted the standard text for the Compromise Agreement which would normally include clauses on (i) waiving employment rights to make a claim for unfair/constructive dismissal etc., and (ii) maintaining confidentiality. It seems that [REDACTED] then added to these standard clauses a measure of protection for the Council to cover (i) the waiving of Martin Morton's employment rights to include detriment re. any PIDA disclosure (Clause 6) and (ii) a clause which required Martin *"not to publicise any of his whistleblowing complaints by communicating them to third parties (including the press) but without prejudice to his right to report any allegations of criminal offences to the Police or other official bodies"*. (Clause 9). In other words, this latter clause did not prevent Martin Morton whistleblowing to the appropriate external agencies, because, of course, he had already done so in October 2007. Clause 9 also included a reference to a sum of £[REDACTED] as a settlement in recognition of Martin Morton not going to third parties (including the press) as mentioned.

5.479 Bearing in mind that both [REDACTED] and [REDACTED] had concerns over the Council's vulnerability to a constructive dismissal claim, it is understandable that a Compromise Agreement was seen as the appropriate way forward from this irretrievable breakdown of trust and confidence between the parties. Clearly, on Martin Morton's behalf, [REDACTED] thought this too. From Martin Morton's point of view, it is clear that the Compromise Agreement did not prevent him from taking his whistleblowing concerns to the appropriate agencies i.e. the Audit Commission.

5.480 Also, bearing in mind the standard practice to maintain confidentiality in the use and terms of a compromise agreement, I don't believe it was inappropriate to include Clause 9 in the agreement and, therefore, I do not believe it was a gag on Martin Morton's whistleblowing allegations as he has claimed.

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5.481 Martin Morton has also stated that he signed the Compromise Agreement under extreme distress. It is clear that by 20 February 2008 Martin Morton's mental state was extremely fragile. [REDACTED] said that Martin was in tears and his morale had been low for some time. Martin has also stated that he was "in a terrible state". In such a frame of mind, it cannot be easy to see what is the right decision or, indeed, to make the right decision. This is, I believe, where [REDACTED] played an important role: his assessment and advice was that Martin could not go back to DASS and he should, therefore, obtain a reasonable settlement figure and leave. After two or three days deliberation Martin Morton decided to accept this advice and in due course he signed the Compromise Agreement on 7 April 2008.

5.482 While it is understandable, in these circumstances, that Martin Morton should feel he was under distress in signing the Compromise Agreement, it is also clear that at the end of his two or three days deliberation he could have decided not to sign it. However, this would have been against [REDACTED] advice. Based on my findings, I do not take the view that by being asked to sign the Compromise Agreement in these circumstances was an example of bullying behaviour which denied Martin Morton due process in the consideration of his grievance and whistleblowing concerns.

Conclusion: Allegation 3(D)

5.483 I have concluded that being asked to sign the Compromise Agreement was not an example of bullying behaviour which denied Martin Morton due process in the consideration of his grievance and whistleblowing allegations.

4 Abuse of Power – Denial of due process (Corporate)

5.484 Martin Morton's claims are shown as allegations of the denial of due process in relation to his grievance and whistleblowing claims as evidenced by:

Allegation 4(A)

The alleged conduct of the Appeals Sub-Committee's meeting to consider Martin Morton's grievance appeal hearing on 23 May 2007 i.e. that he was placed at a disadvantage both before and during the hearing;

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Statement

5.485 Martin Morton has stated that the grievance appeal hearing on 23 May 2007 was a very difficult day which in the event had proved to be inconclusive since the hearing had been adjourned by Elected Members. He complained that he had felt at a disadvantage both before and during the hearing. First, he said that when preparing his notes for the appeal he had been denied access to departmental files which were relevant to his grievance. This was discussed earlier under Allegation 2(G). Specifically he said he told the Panel members that he had not been allowed to refer to the files concerning a Supported Living service provider. Secondly, when he arrived at the meeting at the appointed time, he was kept waiting outside the Committee room for over 30 minutes and during that period [REDACTED] and [REDACTED] arrived late. He also stated that [REDACTED] and [REDACTED] were not in the waiting area at all, but when Martin was invited into the meeting at the start of proceedings, they were already seated in the Committee room with the Elected Members and the officers advising during the appeal. As a result, Martin had gained the impression that [REDACTED] and [REDACTED] may have been in discussions with the Elected Members about his case, before the hearing began.

5.486 Overall, Martin Morton felt that it was unfair for the appeal hearing to be adjourned, since that decision was taken in the light of the [REDACTED] failure to respond in his submission to the Sub-Committee. However, Martin understood that the Elected Members had wished to have sufficient time to hear all the evidence to be submitted, and moreover, had not wished to disadvantage him by not giving him the opportunity to see and reply to a full written response from the [REDACTED].

Comments

5.487 I discussed this allegation with [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.488 [REDACTED] indicated that [REDACTED] at the Appeals Sub-Committee was to provide advice and guidance to the members of the Sub-Committee on the scope they had in dealing with cases before them. This advice covered the Sub-Committee's Terms of Reference; their delegated authority, powers of decision making and questions of law as it applied to cases being considered. [REDACTED] stated that [REDACTED] was also there to assist members to analyse the evidence put to them, in order to enable them to reach a sound

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decision. [REDACTED] role also included assisting members with their deliberations during the decision making process while being careful not to lead members in the decision they reach in each case. It was also [REDACTED], after the meeting, to draft the written decision which the members had made, ensure it was "signed-off" by the members who had attended, and then see it was confirmed in the minutes of the meeting. [REDACTED] was, therefore, to be one of the Appeals Sub-Committee's [REDACTED] and [REDACTED] shared this role with [REDACTED] colleagues.

Appeal Hearing on 23 May 2007

5.489 [REDACTED] said that Martin Morton's statement that he was denied access to Supported Living service provider files "rang bells" with him. He said it seemed likely that it was said, but he did not think the Sub-Committee had taken up the issue. [REDACTED] did not recall whether he gave any advice on Martin Morton's statement that he was denied access to service provider files.

5.490 I asked [REDACTED] for his views on whether [REDACTED] and [REDACTED] may have been in discussions with the Elected Members about his case before the hearing began and [REDACTED] stated that that was not his recollection since it would have been bad practice: in fact, such a discussion would have been so against [REDACTED] practice that he would have remembered it. He felt, on reflection, that perhaps [REDACTED] and [REDACTED] may have arrived in the Committee room momentarily before Martin had arrived, but he was confident that no such prior discussion had taken place. When asked about the delay, he suggested that this may have been caused by members discussing their case papers before either party was admitted to the hearing.

5.491 When I asked why the hearing had been postponed [REDACTED] recalled that it was because there was a gap in the management side's bundle of papers i.e. the [REDACTED] had not responded to all of Martin Morton's claims. [REDACTED] confirmed that it was normal practice for bundles to be exchanged and then sent to Panel Members about one week before the meeting. He also confirmed that Members had noticed this gap and when it was raised at the outset of the hearing, [REDACTED] advised the Members that it would be appropriate to postpone the meeting.

[REDACTED]

5.492 [REDACTED] indicated that any consideration of whether a case was a valid case and therefore suitable for consideration by the Appeals Sub-Committee was dealt with by the Corporate HR Operations Team. He did not get involved in this stage of the process. However, at the Sub-Committee's hearings of such cases, his

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role was to advise on HR and employment policy, procedure and good practice including any employee relations aspects which may need consideration. He was particularly concerned to ensure that there was consistency in the process and in the decisions Members made from one case to another. [REDACTED] role was to provide advice and guidance to the Sub-Committee, in conjunction with a [REDACTED] Officer, who was usually [REDACTED], on the scope Members had in dealing with the cases before them. [REDACTED] also confirmed that, dependent on the content of each case, from time to time, he might ask questions of the parties, in order to assist Members' deliberations. He was careful, however, to ensure that he did not lead Members in the decision they reach in each case.

Appeal Hearing on 23 May 2007

5.493 [REDACTED] could not recall Martin Morton claiming that he had been denied access to service files during his preparations for the appeal hearing. He also indicated that respondents were not allowed in the Committee room before the appellants. He was quite clear that this had not occurred on this day. He suggested that the 30 minute delay probably occurred because it was the Sub-Committee members' practice, prior to inviting the parties into the meeting, to discuss the bundle of papers before them in order to ensure that all members had the same information at the outset; and that any initial procedural question could be dealt with. [REDACTED] recalled that the bundles of papers in this case had been extensive.

5.494 He was aware that [REDACTED] had expected to respond to 4 or 5 items of appeal, whereas Martin Morton wished to discuss approximately 18 or 19 things. Consequently, [REDACTED] was not ready to respond fully. He felt the postponement was decided in order to enable the two parties to have further discussion on the different points between them, prior to a re-commencement of the case in due course.

5.495 When asked, [REDACTED] agreed that it did not seem sensible to take these service issues through the grievance procedure. He suggested that a challenge such as that made by Martin Morton should have been separated out at the start i.e. between service issues and employment issues or it should all go through the grievance procedure. He stated that, by default, this case had gone through the grievance route only.

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5.496 ██████████ could not recall Martin Morton stating to the Appeals Panel that he had been denied access to service files: he indicated that Martin may have done so, but there was nothing in his notes of the meeting about this. Separately, ██████████ stated that the hearing was adjourned because the ██████████ ██████████ ██████████ had not responded to all of Martin Morton's grievance issues in his bundle of papers. Following advice from ██████████, members took the view that ██████████ should first respond in writing and then Martin Morton should have the opportunity to respond in writing.

5.497 ██████████ could not recall whether ██████████ and ██████████ were present in the Committee Room when Martin Morton entered the room. However, he said that ██████████ was "a stickler for procedure" in these appeal cases and ██████████ would be very surprised if ██████████ and ██████████ had discussed matters with the Panel members, as Martin Morton had referred to: he was, he said, almost certain this did not take place.

5.498 ██████████ also addressed the issue of a delay in the commencement of the appeal hearing proceedings. He stated that a 30 minute delay as mentioned by Martin Morton was not unusual. He suggested that, in this case, ██████████ and ██████████ could have been advising Elected Members on procedural issues beforehand.

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5.499 ██████████ stated that he had not been in any discussions with the Elected Members prior to the start of proceedings. He reflected that both sides had been kept waiting in different places and that both had been called at the same time. He recalled that he and ██████████ had entered the Committee room only a matter of seconds before Martin Morton had arrived. In the event the meeting was adjourned after a few minutes.

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5.500 In response to Martin Morton's point re a 30 minute delay in the start of proceedings ██████████ said that ██████████ and ██████████ had been told to arrive at the time they did, because they were not required to give their evidence before this time. He went on to emphasise that there were definitely no discussions between ██████████, himself and Elected Members before the appeal hearing started. ██████████ explained that both he and ██████████ were waiting in the first floor restaurant area and did

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not see Martin, who he assumed was elsewhere, probably in the ground floor reception area.

5.501 [REDACTED] stated that she could not recall what was said about Martin being denied access to Supported Living service provider files. On the second point about a delay, she said that when she and Martin entered the Committee Room, both [REDACTED] and [REDACTED] were already present but they were not in conversation with the Elected Members.

5.502 When asked what she could recall of the reasons for the hearing being adjourned, she stated that the Panel Members had indicated that there was lots of information to consider in Martin Morton's case and that they would need a longer time than had been allocated in order to consider it all. Consequently, arrangements were made for the hearing to be held over two days on 2 and 3 July 2007.

Findings

5.503 The question to consider here is whether Martin Morton was placed at a disadvantage, firstly by the Appeal Panel members not taking on board his complaint about being denied access to service files and, secondly, by the delay of approximately 30 minutes in the start of the appeal hearing, during which period [REDACTED] and [REDACTED] may have been discussing Martin Morton's case with the panel members.

5.504 On the first point, the issue of Martin Morton being denied access to service files has already been discussed under Allegation 2 (G). However, in this instance, it is unclear what was said on the day of the appeal hearing about it. While the issue "rang bells" with [REDACTED], he could not recall giving Elected Members any advice about it. [REDACTED] and [REDACTED] could not recall it and there was nothing in [REDACTED] notes of the meeting. Also [REDACTED] could not recall what was said on this point. What is clear is that there was no discussion about the matter amongst the Panel members. Consequently, I find the information provided on this point is inconclusive.

5.505 On the second point about a 30 minute delay, it seems clear that there was no discussion of Martin Morton's case between [REDACTED] and the Panel members beforehand which could have caused the delay. [REDACTED] was very clear on this point and so too was everyone else. The explanation for [REDACTED] and [REDACTED] being present in the Committee room when Martin Morton entered seems reasonable and realistic.

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- 5.506 Consequently, I have found that Martin Morton was not placed at a disadvantage by the conduct of the grievance appeal hearing on 23 May 2007 and therefore this did not lead to a denial of due process in the consideration of his grievance and whistleblowing claims.

Conclusion: Allegation 4(A)

- 5.507 I have concluded that Martin Morton was not disadvantaged by the conduct of the grievance appeal hearing on 23 May 2007 and therefore this did not lead to a denial of due process in the consideration of his grievance and whistleblowing claims.

Allegation 4(B)

The alleged conduct of the Appeals Sub-Committee's meeting to consider Martin Morton's grievance appeal hearing on 2 July 2007 which he perceived to be a day of prolonged bullying and intimidation as illustrated by:-

- (i) An alleged threat of him being sued for defamation;
- (ii) An alleged virulent and unwarranted personal attack by [REDACTED];
- (iii) No declaration of interest by Panel Members;
- (iv) Advisers allegedly having a previous involvement in the case;
- (v) Martin Morton's witnesses not being allowed to speak;
- (vi) Martin Morton feeling traumatised by events at the hearing;

Statement

- 5.508 At the conclusion of the Appeal hearing on 2 July 2007 Martin Morton felt he had been subjected to a day of prolonged bullying and intimidation. At the outset, when asked by the Chair, Councillor [REDACTED], what resolution he wished to see for his grievance, he said he responded by confirming he wanted to see an external investigation, preferably by the Audit Commission. Martin Morton also said that Councillor [REDACTED] had immediately addressed [REDACTED] by saying "Do you think his grievance warrants an external investigation?" to which [REDACTED] replied "No".
- 5.509 He also claimed that during his opening statement to the Sub-Committee, [REDACTED] stated that he and other colleagues intended to sue Martin for "defamation".
- 5.510 Martin claimed he was subjected to a particularly virulent and unwarranted personal attack by [REDACTED] who stated that under any other circumstances Martin would be subject to capability and disciplinary procedures for making "spurious allegations".

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Martin claimed that as the attack was so sustained Councillor [REDACTED] had to verbally restrain [REDACTED].

- 5.511 Overall Martin felt that the appeal process had been unfair to him, not least because some members, he said, should have declared an interest at the hearing and withdrawn. He referred first to Councillor [REDACTED] who, [REDACTED], Martin's friend/supporter, had told about the background to the Supported Living service provider issues which were to be raised at the Appeal. He also suggested that since Councillor [REDACTED] was a member of the Charging Policy Group within DASS, it was doubly important that she should have withdrawn from the hearing.
- 5.512 Secondly, he also referred to Councillor [REDACTED] who, as [REDACTED] was also a personal friend of [REDACTED].
- 5.513 Finally, he referred to Councillor [REDACTED] who, he said, was initially against the idea of carrying out an external investigation into these matters. Martin claimed that Councillor [REDACTED] has subsequently declared an interest on [REDACTED].
- 5.514 Martin also claimed that some of the officers who advised the Panel, had had a previous involvement in the matters to be discussed, notably [REDACTED] and [REDACTED].
- 5.515 Finally, he complained that some of his own witnesses were not allowed to speak. He referred to [REDACTED] from DASS; and [REDACTED], [REDACTED] and [REDACTED], both employees of XXX (a service provider). He claimed that, since [REDACTED] and [REDACTED] were not Wirral Council employees, it had been ruled to be inappropriate for them to speak at the hearing.
- 5.516 Consequently, Martin felt that while he had anticipated a full and proper investigation by the Appeals Sub-Committee, he came away from the meeting feeling that he had not received one.
- 5.517 Martin stated most strongly that following the hearing he and his wife had felt traumatised and he described the evening of 2 July 2007 as the worst night of their lives. Consequently, he felt that he was forced to withdraw his grievance and promptly did so without commencing the scheduled second day of proceedings.

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Comments

5.518 I discussed these allegations with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], who [REDACTED] the appeal hearing, [REDACTED] and [REDACTED] and [REDACTED], all of whom attended the appeal hearing. Details are shown below:

Alleged threat of being sued for defamation

5.519 [REDACTED] pointed out that the management side's case had been presented by [REDACTED] on behalf of [REDACTED]. Rather than threaten to sue, [REDACTED] stated that [REDACTED] had said that [REDACTED] statement suggested that some officers had felt the need to seek legal advice in the light of Martin Morton's allegations and had reserved the right to take legal action, if necessary. When asked if it had been an appropriate comment in the circumstances and whether advice had been given to members on this point, [REDACTED] confirmed that no such advice had been given.

5.520 [REDACTED] did not recall [REDACTED] stating that he and other colleagues intended to sue Martin Morton for defamation. He said that Martin Morton was attacking some of his DASS colleagues' probity and consequently there was a degree of hostility towards him but [REDACTED] did not feel that this was to an improper extent.

5.521 [REDACTED] didn't recall [REDACTED] saying that he and others intended to sue. [REDACTED] felt it was more a case of [REDACTED] saying that Martin Morton was making allegations and presenting them as fact and he [REDACTED] resented this on a personal level because they were defamatory statements.

5.522 [REDACTED] said that this was not his recollection of what was said. He felt that Martin Morton was essentially saying that [REDACTED] was lying and he [REDACTED] took offence at this. Consequently, [REDACTED] wanted to be assured that Martin Morton could evidence and corroborate the statements he was making. [REDACTED] was angry at the time and sought to register his feelings with panel members. He was concerned to protect his reputation for honesty and integrity. He therefore registered his dissatisfaction about unsupported claims at the time with members of the panel and felt he did so in a calm, professional and appropriate way.

- 5.523 [REDACTED] confirmed that, in his statement to members, he did refer to DASS staff seeking independent legal advice about some of the comments made by Martin Morton. This was particularly so because, he said, some of the claims were personal to those officers.
- 5.524 [REDACTED] said that [REDACTED] was offended but she could not recall him saying that he would sue Martin Morton. [REDACTED] said that [REDACTED] was affronted and hurt that Martin Morton was implying that, as the [REDACTED], [REDACTED] was not doing his job professionally and that she thought that [REDACTED] felt this was a slur on his integrity and professional competence
- 5.525 [REDACTED] said he did not recall the details but he thought there was *"quite a sparring match"* going on.
- 5.526 [REDACTED] said he could not recall this statement from [REDACTED]. However, he did remember what was in [REDACTED] typed notes which stated *"...[REDACTED] stated that [REDACTED] was making allegations and presenting them as fact and he resented this on a personal level because they were defamatory statements..."*
- 5.527 [REDACTED] stated that she recalled this comment from [REDACTED] and she felt it was threatening. She further stated that [REDACTED] was personally trying to sue Martin and advised his staff to do likewise.

Alleged virulent and unwarranted personal attack

- 5.528 [REDACTED] did not recall any personal attack by [REDACTED] or any reference to alleged *"spurious allegations"*. He stated that he did not recollect [REDACTED] being unreasonable in presenting the management side's opening statement. Certainly [REDACTED] had no recollection of [REDACTED], as claimed by Martin Morton, referring to Martin as someone who *"...wanted to be a champion of champions..."* or *"...a social worker who did not want to do social work..."* [REDACTED] stated that, if they had been used, such phrases would be insulting and a clear personal criticism of Martin Morton. When referred to Martin's claim that the attack by [REDACTED] was such that [REDACTED] had to intervene, again [REDACTED] was not aware of this happening.
- 5.529 Management's case at the hearing had been presented by [REDACTED] who cross-examined Martin Morton vigorously. However, [REDACTED] stated that he did not think this had been improper. He did not recall the reference to *"spurious allegations"* or [REDACTED] intervening as described. In fact, he said he did not agree with Martin Morton's claim on this point. [REDACTED] felt that [REDACTED] cross-examination had not gone too

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far and noted that the parties had been allowed some latitude in light of the seriousness of the allegations being made.

5.530 [REDACTED] could not recall [REDACTED] making a virulent personal attack. He explained that the Panel Members expect officers to behave professionally throughout the appeal hearing proceedings and they did so. [REDACTED] went on to say that he felt that Martin Morton "...was in a fragile condition..." on the day. He did not recall [REDACTED] alleged comments about "spurious allegations".

5.531 [REDACTED] indicated that [REDACTED] approach had not been that intense but it was challenging. [REDACTED] felt that Martin Morton thought he could say what he wanted without any challenge and he couldn't: he had to back-up what he was saying. When asked if [REDACTED] had to verbally restrain [REDACTED], [REDACTED] had no recollection of this point.

5.532 [REDACTED] confirmed that his opening statement was not intended to be a personal attack on Martin Morton and the allegations he had made but was intended to identify the issues that Martin Morton had raised and to bring in the department's case. When [REDACTED] said that [REDACTED] stated that his opening remarks were serious allegations against Martin Morton, [REDACTED] said he would back up his statement by asking pertinent questions of Martin Morton. [REDACTED] disagreed that his remarks amounted to a virulent personal attack: he said that he had been direct and clear in what he said. He had been robust but not virulent. [REDACTED] accepted that he had said that Martin Morton "...wanted to be a Champion of Champions..." and he had also claimed that Martin "...was a social worker who didn't want to do social work..." He felt he was offering a direct opinion to the panel members.

5.533 [REDACTED] said that [REDACTED] approach was forthright and challenging, which was something she was used to and she did not believe he had been aggressive. When asked about [REDACTED] alleged intervention, [REDACTED] stated that she didn't believe [REDACTED] had "verbally restrained" [REDACTED]: she thought he "may have put in the odd word with [REDACTED]", but mainly this would have been "just to ease the tension".

5.534 [REDACTED] said that he didn't think that [REDACTED] was being unreasonable. There was, he said, "a lot of aggro" between them and [REDACTED] "got wound up". He also stated that Martin Morton was "good at attacking people and winding them up". [REDACTED] further explained that he remembered saying to [REDACTED] something like "hang on : go easy" because [REDACTED] thought [REDACTED]

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was going a bit over the top in his criticisms of Martin Morton and [REDACTED] was attempting to calm things down.

5.535 [REDACTED] said that he did not recall any personal attack by [REDACTED] and also did not recall [REDACTED] intervening as claimed by Martin Morton. [REDACTED] did, however, remember [REDACTED] referring to Martin as someone who wanted to be a "Champion of Champions" and as "a Social Worker who did not want to do Social work". He explained that these things were not said in an aggressive tone: it was all "matter of fact". [REDACTED] went on to say that if the tone of these remarks been any different then members "would have come down like a ton of bricks".

5.536 [REDACTED] stated that, at one point in the proceedings [REDACTED] had said "[REDACTED] I don't think you need to speak to Mr Morton like that".

No declaration of interest

5.537 I referred [REDACTED] to Martin Morton's statement that the appeal process had been unfair to him not least because some members should have declared an interest at the hearing and withdrawn. [REDACTED] stated that there had been no discussion of a declaration of interest at the appeal hearing. He said there was no conflict of interest for [REDACTED]. He went on to say that the panel focussed on the way Martin Morton had been treated and not on any charging policies. He further stated that [REDACTED] was not involved in the appeal hearing on 2 July 2007 and had subsequently declared an interest re. her friendship with [REDACTED]. He also stated that [REDACTED] was not involved with the appeal on 2 July 2007.

5.538 [REDACTED] responded by stating that Martin Morton's grievance appeal hearing was nothing to do with any particular policy of the Council. It was to do with employment issues.

Advisers allegedly having a previous involvement

5.539 [REDACTED] said he had no involvement in Martin's case prior to the initial appeal hearing arranged for 23 May 2007. He recalled reading the bundle of papers for that meeting but did not recall any discussions with [REDACTED] before this hearing date. He did, however, say that he had spoken to [REDACTED] in the context of Advisers to the Sub-Committee having some understanding of such matters, in order to give appropriate advice. Other than that, he suggested that as [REDACTED], from time to time, he would be aware of cases coming through the Department, but such a broad level of awareness did not compromise his position as an adviser at the appeal hearing. His

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role was, he said, to give members advice not to make the decision in any case.

5.540 [REDACTED] indicated that he had more involvement after the appeal hearing than he had had beforehand. He did have discussions beforehand with [REDACTED], possibly on the basis of Martin Morton's letter of appeal dated 2 March 2007, but this was not prejudicial to the hearing on 2 July 2007.

5.541 [REDACTED] commented that he was not aware of any prior involvement in Martin Morton's case on the part of [REDACTED] or [REDACTED]. He said that he had "filled-in" on the day and that it was possible that [REDACTED] and [REDACTED] had had some discussions but he was sure this would not have compromised their positions as advisers to the Appeals Sub-Committee.

Witnesses not being allowed to speak

5.542 [REDACTED] indicated that he could not recall any of this.

5.543 [REDACTED] referred to the notes made by [REDACTED] on this point and said he was sure that all three of the witnesses mentioned did speak at the hearing. In fact, he recalled that not only did they give evidence in support of Martin's case, but also they were cross-examined by [REDACTED].

5.544 When asked was this evidence admissible, [REDACTED] expressed the view that two of the witnesses were giving evidence about XXX (a service provider) as an employer, not about Martin Morton's own employment based bullying claims. Consequently, it may be that [REDACTED] expressed some doubts about the relevance of this evidence to the grievance under consideration.

5.545 [REDACTED] stated that this was completely incorrect. He said that Martin Morton had asked questions of each of his witnesses in order to get his evidence across. There had been no advice or ruling given by the Panel on the inadmissibility or otherwise of Martin's witness' statements. [REDACTED] referred to his notes of the meeting and said he recalled that [REDACTED] was allowed to have his say. [REDACTED] also recalled other witnesses e.g. [REDACTED], who was not an employee of the Council, being asked, in effect, to focus on the non-service i.e. employment issues of Martin Morton's case.

5.546 [REDACTED] indicated that all of Martin Morton's witnesses had spoken at the hearing. In fact, he recalled that he had asked each of them some questions during cross-examination.

5.547 I referred [REDACTED] to a comment made by [REDACTED] who said that when [REDACTED] began her evidence, Cllr [REDACTED] had said to her *"You don't work for DASS; what's this got to do with [REDACTED]? I don't understand why we need to listen to you because you are not part of DASS. [REDACTED] can't be responsible for everything"*. [REDACTED] said she recalled such comments: they did *"ring bells"*.

5.548 I also referred [REDACTED] to the statement made by [REDACTED] that when Martin was asking his questions of [REDACTED], which related to service users and service providers, they had been disallowed because they were related to service issues not employment issues. [REDACTED] had said that consequently he did not get to answer these questions and, moreover, Martin had had a list of issues to address, but he was not allowed to raise them. [REDACTED] recalled that the focus had been on the non-service issues, such as whether he had seen Martin Morton being bullied. [REDACTED] said that she could agree with [REDACTED] comments as she thought that some of the answers he gave may have been ruled out.

5.549 I asked if there had been a dialogue with the witnesses or whether there had been more of a "Question & Answer" session and [REDACTED] thought it was more the latter case i.e. a formal "Question & Answer" session. She said that Martin Morton had been asking his questions and the witnesses had responded. She explained that some responses were *"not pertinent to what we were considering"*.

5.550 [REDACTED] indicated that he could not recall anyone ruling out the witnesses from speaking. In response to the comment made by [REDACTED] about [REDACTED]' evidence, [REDACTED] said he could not recall saying this, except possibly for the last part i.e. *"[REDACTED] can't be responsible for everything"*.

5.551 [REDACTED] confirmed that he thought there was a formal "Question & Answer" session with witnesses. He explained that often the members would ask questions, particularly if the appellant wasn't good at doing so. [REDACTED] also stated that members would allow witnesses to say what they wanted to say and wouldn't restrict them or intervene.

5.552 [REDACTED] indicated that he could not support [REDACTED] view as [REDACTED] had been free with his comments and [REDACTED] didn't recall any restrictions on the witnesses. He also stated that some comments may not have been relevant i.e. *"the non-employment matters"* but there were no restrictions on witnesses *"when it was relevant"*. He confirmed that he thought it was more a formal "Question & Answer" session.

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5.553 [REDACTED] stated that all three of Martin's witnesses had spoken at the hearing. However, she also said that when [REDACTED] began her evidence, [REDACTED] had said to her "You don't work for DASS; what's this got to do with [REDACTED]?" [REDACTED] explained that [REDACTED] was giving evidence about a lack of care shown to its service users by her former employers XXX. [REDACTED] said that [REDACTED] had come to Martin Morton with her concerns because she trusted him.

5.554 [REDACTED] stated that she felt that the Panel were not interested in what Martin's witnesses had to say.

Martin Morton feeling traumatised by events

5.555 [REDACTED] said he had not left the meeting within any sense of alarm about Martin's emotions during the first day's hearing. He indicated that there had been no discussion amongst the Panel members of there being any issues involved in the conduct of the Appeal hearing.

5.556 [REDACTED] reflected on Martin Morton's claim that he had been traumatised by proceedings and reiterated his view that nothing improper had taken place. Rather, he felt Martin was unused to such scrutiny so he was unprepared for the proceedings and consequently he was taken aback by them. There were, however, no evident signs of Martin's distress at the time.

5.557 [REDACTED] had a similar view: he said there was absolutely nothing in the proceedings which would explain Martin's comment and stated that he thought there was a full and proper investigation. He said Martin Morton was given every opportunity to get his point of view across to the Panel. [REDACTED] acknowledged that the Panel did not reach a conclusion to Martin's case, but this was, he said, because Martin had withdrawn his appeal. [REDACTED] went on to say that good practice was followed on the day. He reiterated that he was an impartial observer of events and he was sure that everything was done properly, "it was OK". There were, he said, no lessons which needed to be learned from what took place because it was all done professionally.

5.558 [REDACTED] stated that, in his view, proceedings at the appeal hearing had not been aggressive but they had been challenging. He reflected that there may be a different perception here, in that one person's challenge can be another person's bullying. However, he felt it had been a perfectly normal process; not traumatic at all.

5.559 [REDACTED] stated that she had expected the hearing to continue on day two as the meeting had not been concluded. [REDACTED] also said that she could understand, however, Martin and [REDACTED] stating that they were traumatised: she said they looked exhausted and drained at the end of day one. [REDACTED] attributed this, at least in part, to the fact that Martin had not been represented and consequently he had not presented his case in the most effective way. She said that Martin Morton had no real understanding of how a grievance appeal was dealt with: he had a huge volume of paper and he was not prepared for what was to come. [REDACTED] said if someone makes allegations they have to be prepared to be questioned. She said that an experienced representative would have got Martin's papers organised in a proper order and the stress and pressure both Martin and [REDACTED] had felt would have been avoided. [REDACTED] also stated that she too had felt exhausted after the day's proceedings and so she *"felt desperately sorry for them and empathised with them"*.

5.560 [REDACTED] also stated that she had suggested an adjournment because it was clear that Martin Morton was not prepared to be challenged and that both he and [REDACTED] appeared to be finding the process stressful. [REDACTED] went on to say that during this adjournment, with Panel members and advisers only present, she had said that she believed that Martin Morton needed union or legal representation. [REDACTED] explained that she said this because all were finding it difficult to follow and cross refer information in Martin Morton's bundle of papers and an appropriate representative could have got this sorted out as well as advise Martin what to expect on the day. She said that all had agreed with her but when the hearing resumed and this was put to Martin Morton he had declined any representation and so the hearing continued without Martin being represented.

5.561 [REDACTED] disagreed with Martin Morton's view. He said it was a full hearing and Martin had called all his witnesses and they had been cross examined. [REDACTED] stated that Martin was due to come back on the second day and if he held the view he did it was *"because he pulled the plug at the end of day one"*. [REDACTED] went further and stated that if Martin and [REDACTED] felt traumatised that it was not because of the Panel members. [REDACTED] also stated that he did not detect anything in Martin and [REDACTED] body language although he could not know their inner feelings.

5.562 I asked [REDACTED] if there had been an adjournment at any point in the proceedings to enable the panel to consider Martin Morton's stressed position and [REDACTED] stated that he didn't recall any adjournment. When asked about Martin Morton's view that

proceedings *"went beyond adversarial"* [REDACTED] disagreed: he did not think anything went *"beyond adversarial"*. He also stated that based on what he had heard [REDACTED] had thought that this was *"not a very big case"* and members had not discussed the issue of Martin being under stress at the end of day one. Consequently [REDACTED] was shocked when Martin withdrew his appeal.

5.563 [REDACTED] confirmed that there had not been a full investigation by the Panel but this was because Martin Morton had withdrawn his appeal and the hearing had not gone into a second day. [REDACTED] stated that he could not see anything in the proceedings which would have caused Martin Morton or [REDACTED] such a trauma. In fact, [REDACTED] went further and stated that he didn't understand why Martin had withdrawn his grievance. He said he was *"staggered when it was withdrawn"*. He said that, on the point about a full investigation, Martin could have taken his case into day two and used his entitlement to sum-up his case as the opportunity to say he was *"not happy with this or not happy with that"*. [REDACTED] stated that the Chair *"Always asks if everyone has had an opportunity to say what they want to say"*. When asked about Martin Morton's view that the proceedings *"Went beyond adversarial"*, [REDACTED] stated that there was *"not one iota of bullying in the proceedings; the members would not allow that"*.

5.564 [REDACTED] went on to say that [REDACTED] was shocked by the formality of the proceedings at the appeal hearing. [REDACTED] recalled that [REDACTED] had been asked if [REDACTED] wanted to be represented by a solicitor. [REDACTED] also recalled that the management side's bundle of papers had been headed *"Martin Morton vs Department of Adult Social Services"*. [REDACTED] said that [REDACTED] was *"distressed in the hearing because people were not responding, there was resistance from everyone"*. [REDACTED] said it had been an *"horrendous day"* and overall [REDACTED] had felt traumatised. In these circumstances [REDACTED] had felt overwhelmed and intimidated by events on the day.

Findings

5.565 Martin Morton claims the grievance appeal hearing on 2 July 2007 was a day of prolonged bullying and intimidation. By this stage there was a long history to Martin's case and working relationships were poor. It seems clear that trust and confidence between the parties was low and there were tensions on the day of the appeal.

Threat of being sued for defamation

- 5.566 Martin Morton has claimed that [REDACTED] stated that he and other colleagues intended to sue Martin for defamation. This is most unusual in a grievance appeal hearing and there are different recollections of what was said or even who said it. Both [REDACTED] and [REDACTED] pointed out that it was [REDACTED] who presented the management side's case. As part of the context in which these remarks were made, [REDACTED] stated that Martin Morton was attacking some of his DASS colleagues' probity and consequently there was a degree of hostility towards him.
- 5.567 For his part, [REDACTED] stated that Martin Morton's view was not how he recalled what was said: he believed Martin was accusing him of lying and, although he took offence at this, he claims he registered his dissatisfaction about what he saw as unsupported claims in a calm, professional and appropriate way.
- 5.568 It was [REDACTED] who confirmed that he made reference to DASS staff seeking independent legal advice when he made his opening remarks by reading from his pre-determined presentation script. I have obtained a copy of this and it is clear that it states *"...indeed those staff are wishing to take independent legal advice with regards to the allegations made.."* (by Martin Morton). If these are the words which were used by [REDACTED], they are not a pleasant thing to hear and would be upsetting for anyone. However, I do not think they indicate that [REDACTED] was threatening to sue Martin Morton for defamation.

Alleged virulent and unwarranted personal attack

- 5.569 There are also differing recollections of [REDACTED] alleged personal attack and on [REDACTED] intervention. The Elected Members and officers did not recall [REDACTED] remarks as being improper or that he referred to *"spurious allegations"*. The general view was that [REDACTED] had been robust and challenging, although individual perceptions of what is robust and challenging are important here. [REDACTED] has accepted that he did say *"(Martin Morton)... places great emphasis on his registration as a social worker but does not want to be one ..."* and that *"(Martin Morton)... sees himself as a champion of champions..."* [REDACTED] has also accepted that he did refer to *"speculative and spurious allegations against staff..."* and that *"...some of these issues in another arena would take us down both the capability and disciplinary route..."* He claimed that these opening remarks were not intended as a personal attack

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on Martin Morton but were intended to identify the issues Martin had raised and to introduce the Department's case.

- 5.570 As [REDACTED] has stated, such comments are a clear personal criticism of Martin Morton and, in my view, remarks such as this should not be made in a forum such as a grievance appeal: they are inappropriate. It is these comments which led to [REDACTED] intervention because as he said, he thought [REDACTED] "was going a bit over the top".

No Declaration of Interest

- 5.571 [REDACTED] was clear on this point: as the grievance appeal was not discussing any particular policy of the Council, she did not need to declare an interest and withdraw from the hearing.

[REDACTED] also said there was no conflict of interest for [REDACTED] and made the same point in relation to [REDACTED] and [REDACTED]

- 5.572 It is important to note that [REDACTED] and [REDACTED] did not take part in the grievance appeal which heard Martin Morton's case and consequently I believe the claims being made in respect of them both are outside the terms of reference for this investigation.

- 5.573 In the case of [REDACTED] was, of course, the Chair of Martin Morton's grievance appeal hearing on 2 July 2007. It seems to me that these allegations about Elected Members' not declaring an interest relate to matters of Councillors' conduct and judgement and such matters properly fall within the jurisdiction of the Council's Standards Committee. Consequently, having considered these allegations, in my opinion they are matters which would more appropriately be dealt with by the Standards Committee. However, in the event of the Standards Committee examining Martin Morton's claims, and subject to the outcome of any such consideration of these matters, it may be appropriate for the Council to revisit these allegations, as they relate to the grievance appeal hearing, at a future date, if a breach of the Councillors' Code of Conduct is established in any individual case.

- 5.574 Consequently, I propose to take no action in respect of this aspect of Martin Morton's complaints.

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Advisers Alleged Having a Previous Involvement

- 5.575 Martin Morton has claimed that both [REDACTED] and [REDACTED] had a previous involvement in his grievance case prior to advising the Appeals Panel. However, both are clear that they became involved in Martin's case in the same way as they would for any other grievance appeal. There were some preliminary discussions between them immediately before the initial appeal hearing on 23 May 2007 in order to ensure they were both clear, as Advisers to the Appeals Sub-Committee, of the nature of Martin's case. However, I do not believe these discussions compromised either of their positions or their capacity to advise the Panel as normal. Both [REDACTED] and [REDACTED] have stated that they had no discussions with anyone else prior to the appeal hearing taking place. Consequently, I do not believe Martin Morton was disadvantaged by any of this.

Witnesses not being allowed to speak

- 5.576 It is clear that Martin Morton's witnesses did speak at the appeal hearing. Martin has clarified his claim in this instance which is that it is a matter of what his witnesses were allowed to say which is in contention. The point he has made is that he feels he should have been allowed to ask his questions of his witnesses and that they should have been allowed to answer fully without interruption. He believes the Panel should have taken a view as to the relevance of their testimony after they had been allowed to speak.
- 5.577 Again, there are differing recollections of this matter. The Elected Members and officers believe there were no restrictions placed on the witnesses. However, [REDACTED] may have expressed doubts about the admissibility of [REDACTED] and [REDACTED] evidence: [REDACTED] agreed with [REDACTED] that the focus was on non-service issues and that some of his answers may, therefore, have been ruled out. Also, [REDACTED] did say something about [REDACTED] "can't be responsible for everything".
- 5.578 It seems to me that there is a big difference between witnesses being allowed to say what they wished to and having what they say ruled out or disregarded for whatever reason. In addition, this issue is not helped by what appears to be a failure to develop a dialogue with each witness: their evidence seems to have been delivered via a question and answer session rather than a full conversation.

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5.579 I believe the nub of this issue lies in what the witnesses were there to talk about. [REDACTED] and [REDACTED] were clearly there to discuss service issues concerning XXX, while [REDACTED] intended to cover both service and employment issues. However, Panel members, with advice, were trying to stick only to employment issues which involved the Council and, hence, there were conflicting expectations built into the process from the outset. The result was that Martin Morton's witnesses did get to speak but nobody was entirely happy. On the one hand, it is understandable that Panel Members felt that witnesses' evidence about service issues was inappropriate, while on the other hand Martin Morton and his witnesses went away feeling they had not been allowed to say what they wanted to say and were dissatisfied. It would also be understandable, in such circumstances, if the witnesses asked themselves the question *"if my evidence is inappropriate and inadmissible, why was I not told about this in the first place?"* The answer lies, in this case, in the lack of separation of service issues from employment issues at the outset.

Martin Morton feeling traumatised by events

5.580 Martin and [REDACTED] described the 2 July 2007 as the worst night of their lives. However, on the other hand, Elected Members and officers attending the grievance appeal hearing felt there was nothing traumatic in the proceedings.

5.581 By its nature an appeal process is adversarial and it can be a difficult process which takes time and experience to adapt to. If you only attend such a process once then you have no time to adapt or adjust your expectations. Martin Morton was not represented at the appeal hearing and has little or no experience of such occasions. [REDACTED] was shocked at the formality: Martin had been asked if he wished to be represented by a solicitor. On the other hand, [REDACTED] said that [REDACTED] approach was forthright and challenging which was something she was used to.

5.582 I believe an understanding of this particular issue can be found in some of the comments which have been made. [REDACTED] felt Martin Morton was unused to such scrutiny and was unprepared for the proceedings and consequently taken aback by them. [REDACTED] felt that Martin Morton had no real understanding of how a grievance appeal was dealt with and that if someone makes allegations they have to be prepared to be questioned.

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- 5.583 On the other hand, [REDACTED] was distressed because "people were not responding". I believe that [REDACTED] sense that this was the case may be linked to the fact that a grievance appeal hearing is not the means by which such service issues should be discussed: the appropriate means for such service issues is via an investigation in accordance with the Council's whistleblowing procedure which does not include such an adversarial approach.

Conduct of Appeals – General

- 5.584 In view of the nature of these allegations I felt it was necessary to consider some important principles in the conduct of this appeal hearing and I discussed these matters with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] and also [REDACTED]. Details are shown below:

Separation of service and employment issues

- [REDACTED]
- 5.585 [REDACTED] confirmed that he had read Martin Morton's bundle of papers prior to the meeting but he did not recall any reference in it to an external investigation. He stated that this was a complex case, which had 18 or 19 separate points at issue and this has not helped, he claimed, because Martin's statement was not very clear.
- 5.586 I asked [REDACTED] whether it was appropriate to take the case through the grievance procedure and he said that it was not uncommon to do so. However [REDACTED] also suggested that if the issues in this case had been fully understood, he may have had a different opinion.
- 5.587 [REDACTED] said that he remembered Martin Morton's case as an employment claim and confirmed that the "bundle" for the meeting comprised 156 pages from Martin Morton and 118 pages from DASS. [REDACTED] suggested that Martin Morton did not submit a clear analysis of how these papers all related together and there was no overview. Consequently, in [REDACTED] view, Martin's was not a clear bundle: Members had to listen to Martin Morton carefully in order to understand his case and then examine the [REDACTED] and [REDACTED] "in order to understand it all".
- 5.588 [REDACTED] said that, in his view, the Panel could only arrive at two assumptions: first, they would be hearing a grievance about employment matters under the terms of the grievance procedure; and secondly, they would not be hearing an appeal based on the whole bundle of papers. [REDACTED] took this view

because he believed that, following the adjourned appeal hearing on 23 May 2007, the [REDACTED] and Martin had gone away to identify exactly what it was that was still not agreed/outstanding. He said that he expected that on the 2 July 2007 Martin Morton would take the Panel through what was the remainder of his bundle of papers. [REDACTED] suggested that, in these circumstances, it was crucial to listen to what Martin had to say and then, with Martin's direction, cross-reference to his documents. [REDACTED] explained that this was his position on 2 July 2007.

5.589 [REDACTED] then mentioned that Martin Morton was not represented on the day. He indicated that Martin's witnesses gave evidence and Martin's role was (i) to explain the relevance of what they had to say; and (ii) to cross reference their evidence with his bundle of documents. [REDACTED] stated that this second point was very important in this case as this was the basis of the discussions with [REDACTED]. He said that all three witnesses gave evidence relating to service providers and, in particular, XXX. However, [REDACTED] stated that these concerns about XXX had already been accepted and the issue was now about the timing of action and length of time it had taken to take that action to address the issues accordingly. He added that one witness, [REDACTED], also provided what amounted to a character reference for Martin Morton in respect of his extra workload etc.

5.590 [REDACTED] stated that this was the extent which he assumed remained of Martin's case. He explained that he "*did not take on whether he (Martin) had missed anything*". He referred to the headings which Martin Morton had used in presenting his case i.e.:-

- (i) National Policy – Martin was not happy with national policy on supported living
- (ii) Application of National Policy – Martin felt DASS had not acted quickly enough with poor service providers;
- (iii) Section 3 – Martin felt he had not been given enough support by management;
- (iv) Excessive workload – Martin felt he had been left with too much work to do.

5.591 [REDACTED] stated that in the circumstances he was convinced that Martin was confused about his case. He said that even where Martin Morton may have been talking about what could be construed as service related issues, he framed them all as management failings towards him as an employee e.g. when he talked about XXX (a service provider) it was in terms of management's lack of support to him in how this was managed. [REDACTED] felt, therefore, the Martin Morton appeared to be talking about employment related grievances about those service

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issues and was doing so within the grievance procedure/process.

5.592 I then asked [REDACTED] who was the guardian of good practice in such matters as employee appeals. [REDACTED] felt that this was a joint responsibility shared between HR and Legal colleagues who advised the Appeals Sub-Committee in each case. He confirmed that it was himself and [REDACTED] who shared responsibility to see that fairness, reasonableness and justice were served at appeals hearings. He also confirmed that there had been no discussion before the appeal hearing about the need for a separation of Martin Morton's whistleblowing claims from his grievance complaints.

5.593 Bearing in mind that Martin Morton had asked for an investigation of his complaints, I asked [REDACTED] if he had considered going down this route i.e. an investigation within the Council's Whistleblowing policy perhaps internally via Internal Audit and [REDACTED] confirmed that there had been no internal investigation other than via the grievance procedure. He also confirmed that, during his time with Wirral, the Council had had no Whistleblowing cases to deal with.

5.594 Further, when asked whether any advice had been given to the Appeals Panel as to the appropriateness, or otherwise, of dealing with Martin Morton's allegations in this grievance format, [REDACTED] confirmed that this had not happened.

5.595 I asked [REDACTED] for his view on the obligations there are on officers at various levels of the organisation to give appropriate advice to colleagues who are dealing with grievance or whistleblowing cases. [REDACTED] agreed that this should operate as follows:-

- | | |
|----------------------------|--|
| (i) Employee | Departmental HR officer; |
| (ii) Departmental Director | Departmental HR officer; |
| (iii) Chief Executive | [REDACTED]; |
| (iv) Appeals Sub-Committee | Joint responsibility: [REDACTED]
[REDACTED] / [REDACTED] [REDACTED] |

[REDACTED] agreed that the Departmental HR officer; [REDACTED] and [REDACTED] all had a strategic contribution to make.

5.596 [REDACTED] also stated that following Martin Morton's case there had been revised Corporate HR advice issued on the need to be clear as to what type of case/complaint constituted a grievance and what constituted a whistleblowing case.

5.597 [REDACTED] confirmed that Martin Morton did tell the Sub-Committee that as a resolution of his grievance he wanted to see an external investigation, preferably by the Audit Commission. Both [REDACTED] and [REDACTED] wanted to ensure that the appeals panel dealt with those aspects of Martin's grievance which they considered properly fell within the parameters of the grievance procedure. Having read Martin Morton's papers beforehand, he felt that some aspects were suitable to be heard e.g. "...you're just a dogsbody..." but others were not. These other matters were not employment issues, but were service issues and while [REDACTED] felt Martin Morton was entitled to express a view on them, he also felt it was the [REDACTED] who determines policy not employees: i.e. Martin could express his view, but the hearing was not a trial of [REDACTED] service decisions.

5.598 I referred [REDACTED] to Martin Morton's letter of appeal to the [REDACTED], [REDACTED], dated 2 March 2007 which was sub-headed "Re. Martin Morton - Grievance/Whistleblowing". It made Martin's view clear that:-

"...the matters pertaining to my grievance which remain outstanding relate to the following:

- *Unethical / Illegal practice including widespread and prolonged collusion with abuse;*
- *Gross maladministration;*
- *Financial mismanagement*
- *Bullying ...*

... I now feel that a Resolution to my grievance is for my grievance concerns to be subject to scrutiny by an external body, preferably the Audit Commission..."

5.599 [REDACTED] confirmed that he could not recall reading the letter but he was aware of the wider aspects to Martin's case, which were outside the jurisdiction of the "grievance panel". He felt, at the time, that these wider service aspects should have been redirected to the [REDACTED] to discuss with the [REDACTED]. He had thought about this aspect and the need for a separation of the employment and service issues in Martin Morton's grievance, but in the event proceedings at the appeal hearing did not get to the point where he was able to raise it because the appeal had been withdrawn and so [REDACTED] did not express this view to anyone. He also stated that his usual practice is to give definitive advice at the end of the hearing but this was never reached because the appeal was withdrawn. He thought it was likely however, because of the

complexity of the case that before the hearing began on the first day he advised members of the relevant issues including the distinction between employment and service issues. However, owing to the lapse of time (3 years) [REDACTED] could not be sure of this. He said that usually there is a preliminary discussion of the relevant issues between himself and members before any appeal begins. [REDACTED] said he disposed of his personal notes after the Compromise Agreement was signed in April 2008 and so he could not refresh his memory from them].

5.600 [REDACTED] accepted that Martin Morton's letter of appeal was clear in its reference to a mixture of both service and employment issues and to scrutiny by the Audit Commission and that Martin Morton's submission in his written papers and on the day reflected this. [REDACTED] also accepted that service issues were clearly outside the scope of a grievance appeal hearing. He said that he encouraged Martin Morton when he was presenting his evidence to concentrate on those aspects of his case which touched upon how he was treated by DASS rather than those aspects of his case which amounted to criticism of the way in which [REDACTED] dealt with external contractors. [REDACTED] stated that he believed that members were aware that their role was to concentrate on the way Martin Morton was treated by the Department.

5.601 I asked [REDACTED] who was the guardian of good practice on such matters as employee appeals and he reiterated that this role fell to both himself and [REDACTED], on a shared basis, as described. Similarly, he confirmed that it was himself and [REDACTED] who shared responsibility to see fairness, reasonableness and justice was served at appeals hearings. He also reiterated that he had felt Martin Morton's issues should be listened to by members of the appeals panel and then routed to [REDACTED] to brief his lead member accordingly. [REDACTED] felt that Martin Morton's whistleblowing complaints were relevant background material to his grievance over the way in which he was treated by the Department and his claim that he was victimised because he had raised those complaints.

5.602 I then referred [REDACTED] to the Council's Whistleblowing and Grievance procedures and pointed out that the Whistleblowing procedure makes no reference to the involvement of members either individually or in the Appeals Sub-Committee and I asked [REDACTED] who in the officer structure is the guardian of the Whistleblowing Policy. [REDACTED] felt that the primary responsibility for dealing with any whistleblowing complaint is that of the [REDACTED] of the Department against whom the complaint is made and the [REDACTED] who receives the complaint. They can seek legal advice on any of the issues raised by that complaint.

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There is no person designated in the whistleblowing procedure as its guardian.

5.603 Finally, I referred [REDACTED] to the order of proceedings on the day of the appeal hearing. I asked first, in the light of the adjournment of the hearing on 23 May 2007, whether there had been a previous agreement between the parties not to pursue those elements of Martin's case which had not been answered by DASS. [REDACTED] said that there was no "narrowing down" of Martin's case, not least because the management side were on the back foot and there was no request to Martin Morton to reduce his case or presentation further when, in fact, DASS had not responded fully anyway.

5.604 [REDACTED] also stated that the Panel were concerned to get DASS to answer fully the questions which Martin Morton had raised and they would have preferred Martin to have been represented so that proceedings would then be *"on a proper course"*. [REDACTED] felt that *"it would have been improper to narrow down Martin Morton's case without Martin having proper advice"*.

5.605 Secondly, based on the notes of the hearing it, appeared that Martin Morton commenced with the presentation of his case and called his witnesses and was followed by [REDACTED] making his opening remarks in presenting the management side's case. This was followed by [REDACTED] asking Martin Morton a series of detailed questions, first addressed to managements' bundle and then addressed to Martin Morton's bundle. The hearing had then been adjourned until the following day. In the circumstances, I asked [REDACTED] how this sequence of events fitted the standard procedure for such grievance appeals and [REDACTED] stated that such cross-examination was not out of place: it was perfectly compatible with the grievance procedure. The deviation from the grievance procedure was that [REDACTED] opening remarks preceded his cross examination but if that helped to clarify the issues it would have been no disadvantage to Mr Morton. [REDACTED] could not recall the reason for the deviation from the normal procedure.

[REDACTED]

5.606 [REDACTED] said that he did not recall any discussion about the need for a separation of Martin's complaints into service issues and employment issues or whether they should be dealt with under separate procedures i.e. whistleblowing or grievance. [REDACTED] confirmed that Martin Morton's letter of appeal to the [REDACTED], dated 2 March 2007, which listed his grievances, was available to the Panel members and advisers in Martin Morton's bundle of papers.

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5.607 I referred [REDACTED] to [REDACTED]'s comment that the grievance procedure was about employment conditions [i.e. not about service matters] and [REDACTED] explained that [REDACTED] was suggesting that the meeting should not be discussing these service issues: they should be trying to focus on employment issues only. [REDACTED] also said that there was no discussion between the Panel members and advisers about the point which [REDACTED] was raising.

5.608 [REDACTED] also stated that during the hearing [REDACTED] was trying to ensure that the proceedings "kept on track" i.e. that the issues Martin Morton was raising concentrated on employment aspects, such as the treatment Martin had received from [REDACTED] when he had raised his service concerns. [REDACTED] also said that there was no prior discussion or briefing given to Panel Members on this point *"they just went in and started"*.

[REDACTED]

5.609 [REDACTED] could not recall whether [REDACTED] had asked him *"do you think this grievance warrants an external investigation..."*. [REDACTED] also could not recall Martin Morton's letter of appeal where he had specified his wish for an external investigation. [REDACTED] confirmed that his recollection was that there was an emphasis on the service provider issues and the referral to CSCI; the Audit Commission was not on [REDACTED] mind.

5.610 [REDACTED] had made his point that Martin Morton's grievance complaints included service issues as well as employment issues and that the hearing was not there to hear a service grievance: i.e. members may have their concerns in the light of what was said and would want to hear what DASS was doing to address these, but such matters were not part of the grievance procedure. He confirmed that this point was not taken up by the Panel or its advisers.

5.611 [REDACTED] also stated that if Martin Morton's complaints had come in now, they may have been dealt with differently though throughout it was difficult, if not impossible to either separate, or get the complainant to see a separation between the service and employment issues.

[REDACTED]

5.612 [REDACTED] confirmed that there had been no discussion with [REDACTED] and/or [REDACTED] before the hearing about the need for a separation of Martin Morton's whistleblowing claims from his grievance complaints. [REDACTED] reiterated that he had not considered going down this route within the Council's

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whistleblowing policy either internally via Internal Audit or externally via the Audit Commission.

5.613 [REDACTED] also reiterated that there had been no discussion with Members of the Appeals Panel about the suitability or otherwise of using the Sub-Committee, in its grievance procedure mode, to consider Martin Morton's service based complaints. However, [REDACTED] did recall that *"the procedure changed last year"* when revised corporate advice on this issue of separation was issued (i.e. Grievance/Whistleblowing). [REDACTED] confirmed that he would always follow the corporate lead and advice on such matters as this.

5.614 Finally, I raised the question of the obligation there is on key officers at all levels of the organisation, to provide appropriate advice to their line manager colleagues. When asked who should provide HR advice on appeals procedures to the employee concerned, to the Director; to the Chief Executive and to Elected Members, on reflection [REDACTED] felt it should be respectively, the Departmental Lead for HR for the first two examples; and the Head of Corporate HR for the latter two examples. In the light of the discussion, [REDACTED] felt clear on this point.

5.615 When asked for his view of whether good practice was followed and justice was served in this case, [REDACTED] went on to suggest that, in the light of the experience of Martin Morton's case, lessons had been learnt by the authority and that was why the policy advice had changed in 2009. (re Grievances/Whistleblowing).

[REDACTED]

5.616 I referred to an extract from Martin Morton's letter of appeal, dated 2 March 2007 and asked [REDACTED] if she would agree that of these four bullet-point issues, three related to service matters, while one related to employment matters, and [REDACTED] confirmed that she agreed with this view.

5.617 [REDACTED] stated that she did not recall any advice being given to the Panel members, either before the hearing began or during proceedings, about whether Martin Morton's complaints, as listed in his letter of appeal, were appropriate to be considered by the Appeals Sub-Committee in this grievance format. She said that the only issue to be dealt with by the Panel was that of bullying: the other issues were for the officers to deal with. She explained that Martin Morton had a right (or even a duty) to report his concerns over service matters but this was not the main focus of the grievance hearing. Hence, the main issue was the alleged

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bullying of Martin Morton i.e. that he was "*sidelined and not listened to*".

5.618 [REDACTED] also stated that she did not recall any advice about the separation of Martin's Morton's complaints into (i) service and employment issues; or, alternatively, (ii) whistleblowing and grievance issues. [Her personal notes were no longer available]. [REDACTED] also explained that she had not known a case similar to this one.

5.619 When asked if there had been any discussion amongst Panel members about these points, [REDACTED] stated that [REDACTED] who was the [REDACTED], was very competent and would give advice if appropriate: she didn't recall such advice or any such discussions.

5.620 [REDACTED] said she could not recall if there had been any discussion of the statement by [REDACTED] that the grievance procedure was about employment conditions and that the contracting procedure with external organisations was a separate issue and not a matter for the grievance hearing.

5.621 [REDACTED] was aware of the distinction between whistleblowing and grievance matters and was also aware of the role of the Appeals Sub-Committee in dealing with employment issues only i.e. internal not external issues.

5.622 I asked [REDACTED] what kind of case the Panel members had expected to be hearing; whether it was to be an employment case, based only on relevant extracts from the bundle of papers or whether the parties were in a position to address all the issues in the papers. [REDACTED] stated that she did not believe that there was a discussion on this point before the appeal hearing began: however, everyone knew they were there to deal with employment issues - as an employment forum.

5.623 Martin Morton had not spoken to all the issues in his bundle of papers but seemed to have focussed on [REDACTED] response of 29 June 2007. [REDACTED] said that none of the issues in Martin Morton's bundle of papers had been ruled out.

When asked if the members had "*taken on*" whether Martin Morton had missed anything in his verbal presentation, [REDACTED] said that it was "*just so difficult to follow*". [REDACTED] went on to say that members were patient; both Martin and [REDACTED] were close to tears on occasions, [REDACTED] kept offering them a break. [REDACTED] felt that Martin had not done himself justice because he hadn't had any help in presenting his case.

██████████

5.624 ██████████ confirmed that he was aware of Martin Morton's letter of appeal: he recognised it from the bundle of papers. He agreed that of the four bullet-point issues, three related to service matters, while one related to employment matters. He stated that there was a general concern as to "*whether or not a lot of this has to do with a grievance appeal*". He said it was queried during the proceedings. ██████████ also said that there was no advice given beforehand about the separation of Martin Morton's complaints into (i) service and employment issues or, alternatively, (ii) whistleblowing and grievance issues. ██████████ also said that ██████████ was sensitive about discussing service issues and ██████████ could not remember any discussions on this point but members "*took it on board*". He stated that ██████████ and ██████████ had got together and appeared to be agitated when service issues were mentioned: he thought "*they didn't want to let Martin Morton get to the Members*". ██████████ stated that "*a lot of the issues were not anything to do with us*".

5.625 I asked ██████████ whether he was aware of the distinction between whistleblowing and grievance matters and ██████████ confirmed that he was. He said it wasn't discussed as an issue: the members would listen to ██████████ on this. ██████████ also said that he was aware of the role of the Appeals Sub-Committee in dealing with employment issues only i.e. internal not external issues. He said that ██████████ would remind them of this.

5.626 I also asked ██████████ what kind of case the Panel members had expected to be hearing; whether it was to be an employment case based only on relevant extracts from the bundle of papers or whether the parties were in a position to address the issues in the entire bundle of papers. ██████████ stated that, throughout, the parties were in a position to address all the issues in the bundle of papers.

5.627 I asked ██████████ if there had been an adjournment at any point in the proceedings to enable the panel to consider Martin Morton's stressed position and ██████████ stated that he didn't recall any adjournment. When asked about Martin Morton's view that proceedings "*went beyond adversarial*" ██████████ disagreed: he did not think anything went "*beyond adversarial*". He also stated that, based on what he had heard, he had thought that this was "*not a very big case*" and members had not discussed the issue of Martin being under stress at the end of day one. Consequently ██████████ was shocked when Martin withdrew his appeal.

5.628 When asked if the members had "*taken on*" whether Martin Morton had missed anything in his verbal presentation, ██████████ said he could not recall any discussion on this point. He said that

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Martin was due to have another day at the hearing and could have brought out any "missing bits" then e.g. in his summing up.

[REDACTED]

5.629 [REDACTED] confirmed that he was aware of Martin Morton's letter of appeal and confirmed that he agreed it reflected service and employment issues. [REDACTED] stated that there had been a reference to service matters not being appropriate for a grievance in remarks made by [REDACTED] during proceedings. [REDACTED] also stated that he could not recall any advice on this topic being provided to Members before the appeal hearing began and he did not recall any advice about the separation of Martin Morton's complaints into (i) service and employment issues; or alternatively (ii) whistleblowing and grievance issues.

5.630 [REDACTED] was aware of the distinction between whistleblowing and grievance matters and [REDACTED] confirmed that he was aware of the role of the Appeals Sub-Committee in dealing with employment issues only.

5.631 When I asked [REDACTED] what kind of case the Panel members had expected to be hearing, whether it was to be an employment case based only on relevant extracts from the bundle of papers or whether the parties were in a position to address all the issues in the papers, [REDACTED] said that there were no restrictions placed on either party or anything they wanted to say.

5.632 When asked if the members had "taken on" whether Martin Morton had missed anything in his verbal presentation, [REDACTED] said he could not recall any discussion on this point. He did recall the [REDACTED], [REDACTED], asking Martin Morton if he had finished presenting his case and Martin had confirmed that he had.

[REDACTED]

5.633 [REDACTED] stated that she recalled [REDACTED] [REDACTED] question to [REDACTED], at the outset of the appeal hearing, when she asked what resolution Martin wished to see for his grievance. [REDACTED] said Martin had replied by saying that he wanted an external investigation as a resolution to his grievance, preferably by the Audit Commission. [REDACTED] also stated that she recalled [REDACTED] responding to [REDACTED], as to whether he thought Martin's case warranted an external investigation, by saying "No". She said that there was no discussion amongst the Panel Members about Martin's mention of the Audit Commission.

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Findings

- 5.634 Martin Morton wanted an external investigation of his grievance concerns, preferably by the Audit Commission. However, as [REDACTED] [REDACTED] has pointed out, Martin was not represented at the appeal hearing and consequently, it was difficult to understand and follow the presentation of his case or the points being made in Martin's bundle of papers. However, [REDACTED] said he had read these papers and was treating Martin Morton's case as an employment claim. He took this view because he believed the [REDACTED] and Martin had gone away to identify exactly what it was that was still not agreed / outstanding.] However, [REDACTED] did not take the same view and said there was no "narrowing down" of Martin's case. This was also the view of the Panel Members.
- 5.635 It is important to be clear about the nature of Martin Morton's case, particularly when it covers both service and employment issues. As mentioned previously, his letter of appeal and his case papers refer not only to concerns about service providers; but also concerns over the Council's own practice on Fairer Charging, as well as his employment claims. It is important to be clear because there are different procedures for these different concerns. First, the Appeals Sub-Committee does not have any jurisdiction over service matters: these are for the appropriate Lead Member to deal with. Secondly, the whistleblowing procedure, which is the correct procedure for service concerns and has a wider public interest dimension, does not involve Elected Members in any appeals capacity. Consequently, I believe the clear message is, don't put service complaints through the grievance procedure and don't put employment issues through the whistleblowing procedure [there's no public interest]: make sure there is a clear separation of these issues.
- 5.636 [REDACTED] and [REDACTED] agree on who is the Council's guardian of good practice in these matters; it is a responsibility they share. However, given the nature of Martin Morton's concerns and the need to use the appropriate procedures for them, it is surprising to me that neither [REDACTED] nor [REDACTED] gave any advice about the need to separate Martin's concerns into either service and employment matters; or whistleblowing and grievance matters, at any stage to anyone. They also did not respond to [REDACTED] argument on the day that the appeal hearing was not there to hear a service grievance about XXX (a service provider).
- 5.637 [REDACTED] said he thought it had been agreed that there would be a focus to Martin Morton's claims based on what was still outstanding but, it seems, others did not understand this to

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be the case. Panel Members said there was no discussion about this point and there were no restrictions placed on the two parties about what and how they should present their cases.

5.638 [REDACTED] was aware of Martin Morton's request for an external investigation but both he and [REDACTED] wanted to ensure the Panel dealt with those aspects which properly fell within the parameters of the grievance procedure i.e. employment issues only. [REDACTED] took the view that, on this basis, some aspects of Martin Morton's complaints were suitable to be heard while others were not. He said that these others were service issues and he felt that, while Martin Morton could express a view on them, the hearing was not a trial of [REDACTED] decisions. In the event, I believe the Panel's concern to urge Martin Morton to stick to employment matters would not have encouraged Martin to express his view on service matters.

5.639 [REDACTED] said he was waiting to hear what Martin Morton had to say before offering [REDACTED] to the Panel. However, it is clear from [REDACTED] viewpoint that all and any service concerns would not be considered: he was consistent in this advice to the Panel. [REDACTED] said he thought about separating Martin Morton's issues, as mentioned, but in the event he never got to give this advice because Martin Morton withdrew his appeal at the end of the first day; so [REDACTED] was left "high and dry" with his advice.

5.640 Subsequently, on reflection, [REDACTED] also said that he thought he had, in fact, given advice on service and employment issues to the Panel members at the start of the appeal hearing but owing to the lapse of time (3 years) he could not be sure of this. However, all Elected Members are clear that they do not recall being given any such advice at any point.

5.641 The Elected Members know that their role in Appeals Subcommittee is to deal with employment issues only. They all also said they were aware of what constitutes a whistleblowing issue. Specifically in this case, Panel members were aware of Martin Morton's bundle of papers and that his concerns covered both service and employment matters. Given these circumstances i.e. [REDACTED] stance, as well as the Elected Members' position, I believe the outcome of the appeal hearing would have been a foregone conclusion i.e. the Appeals Panel would not have taken account of Martin Morton's service concerns. As [REDACTED] has said, these "were issues for the officers to deal with" while [REDACTED] has said "a lot of the issues were not anything to do with us".

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5.642 Consequently, I believe Elected Members should have been aware of, and could have queried, the need for a separation of Martin Morton's issues. They also could have queried whether the grievance appeal forum they were engaged in was serving its purpose in this case. However, perhaps understandably, they listened to and took advice from [REDACTED] and [REDACTED], such as was given.

5.643 It seems to me that, inevitably in these circumstances, it was not possible for the appeal hearing to have delivered what Martin Morton had requested or for the process to have been what he expected it to be i.e. an independent investigation of all his whistleblowing and grievance complaints. As a result, I believe the appeal hearing must have been particularly disappointing for Martin Morton and his witnesses, as [REDACTED] has said *"he had no sense of there being an alternative route to the grievance appeal. Martin had taken the issues as high as he could within the Council and 'nothing happened' to resolve his concerns"*.

5.644 Also, it is clear that Martin Morton put his faith in the grievance process: he has said that he *"gave up trying to explain to [REDACTED] because he felt he would be able to 'say what he wanted to say to the Elected Members'"*. However, in the event, it seems that anything Martin Morton said on service issues, unless it was linked to an allegation of bullying against him, would not be taken into account by Panel members. It seems Martin's witnesses' experiences are a clear example of this.

5.645 On the other hand, [REDACTED] was concerned that, although they could not be considered by the grievance appeal hearing, all of Martin Morton's service concerns should not be ignored but should be referred to the Lead Member for discussion with the [REDACTED]. However, [REDACTED] view of these matters was already known and [REDACTED] made it clear, both in the management side's bundle and at the appeal hearing itself that:

- (i) Service matters are not grievances; and
- (ii) Martin's service concerns had been referred to CSCI who had the jurisdiction to deal with them.

Consequently, I believe this raises the question, from Martin Morton's viewpoint, of what would be achieved by referring his concerns back to the [REDACTED] and [REDACTED] in this way.

5.646 The key issue to focus on here when dealing with grievances is the need to secure closure: I suggest this would not have happened via [REDACTED] preferred solution. It was because of the [REDACTED] stance on Martin Morton's service concerns that

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Martin Morton wanted the external investigation of them: [REDACTED] appears to have missed this point.

5.647 It seems that [REDACTED] also missed the point that Martin Morton's concerns were not just about XXX (the service provider): as mentioned earlier, they covered the Council's approach to Fairer Charging and the "special charging policy". Clearly these are not matters for a CSCI investigation. They are also not matters for a grievance. In circumstances where there is a complaint about service issues from an employee and the [REDACTED] chooses not to investigate them, these are matters for an investigation under the Council's whistleblowing procedure.

5.648 The explanation for this point apparently being missed by the officers, may lie in the fact that, until Martin Morton's case arose, the Authority had no experience of whistleblowing matters: as [REDACTED] has said, the authority had never had a whistleblowing case up to this point in time. However, this does not mean that this aspect of Martin Morton's case was treated appropriately: I do not believe it was.

5.649 It is also worth noting that there are signs that the experience of Martin Morton's case has had some effect. First, [REDACTED] has said that if Martin's complaints had come in now he feels they may have been dealt with differently, although it was difficult, if not impossible, to either separate or get Martin Morton to see a separation between the service and employment issues.

5.650 Also, [REDACTED] has said that there has been revised Corporate HR advice issued on the need to be clear as to what type of case/complaint constitutes a grievance and what constitutes a whistleblowing case.

5.651 On a final point, and in the light of the difficulties which Martin Morton found with his experience of the appeal hearing, I asked members whether any support had been provided to help Martin, as the complainant, to prepare for the appeal e.g. regarding proceedings; his presentation; etc. It seems that there was none offered and in the circumstances it may be that this is something to consider for future cases.

Conclusion: Allegation 4(B)

5.652 I have concluded that, on balance, although Martin Morton was not bullied by the conduct of events on the day of the grievance appeal hearing, the lack of separation of service and grievance issues led to a denial of due process in the consideration of his case.

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Allegation 4(C)

Following the appeal hearing, the subsequent refusal of Martin Morton's request for a Members' briefing meeting;

Statement

5.653 When searching his personal records Martin Morton accessed a note placed on his HR file by [REDACTED] immediately before [REDACTED] retired at the end of October 2007. This note confirmed that, following the withdrawal of Martin's grievance, [REDACTED] offered the Councillors who were on the appeal a briefing and, at later date, he briefed [REDACTED] to ensure that any concerns that she and her fellow members may have had regarding issues raised by Martin Morton were not ignored. This issue was discussed under Allegation 2(O).

5.654 Martin Morton has stated that he felt the timing of the placing of this note on his file on 31 October 2007 had been curious, since that was the day [REDACTED]. Subsequently, he e-mailed [REDACTED] on 27 November 2007 requesting that he should be given the same opportunity as [REDACTED] to brief members but had received a reply indicating that this was not appropriate.

Comments

5.655 I discussed these allegations with [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.656 [REDACTED] explained that [REDACTED] had met [REDACTED] [REDACTED] [REDACTED], after Martin Morton had withdrawn his appeal in order to discuss the wider issues raised at his grievance appeal. [REDACTED] had not been involved in this meeting. However, after Martin Morton had written to [REDACTED] to request a similar opportunity, [REDACTED] had met with [REDACTED] together with [REDACTED] to give her advice on her response, which was to refuse the request.

[REDACTED]

5.657 [REDACTED] confirmed that he had not taken part in the meetings between [REDACTED] and [REDACTED]. However, having discussed with [REDACTED] what to do with the wider service based issues in Martin Morton's complaints after Martin withdrew his grievance, [REDACTED] did not know if the whistleblowing elements had any foundation, so he felt that the

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best way to deal with these aspects was to get the [REDACTED] to discuss them with Elected Members. Consequently, [REDACTED] was pleased when this meeting took place.

- 5.658 [REDACTED] confirmed that he had been involved in discussions with [REDACTED] and [REDACTED] over Martin's request for the same opportunity to brief her and he had drafted [REDACTED] reply to decline Martin's request. [REDACTED] added that that [REDACTED] did not believe an investigation of Martin Morton's whistleblowing allegations was necessary after she received a briefing from [REDACTED].

Findings

- 5.659 Martin Morton wanted an investigation into his whistleblowing complaints. Following the withdrawal of his grievance appeal he was corresponding with [REDACTED] about this but without success. At the same time he came across [REDACTED] note on his HR file. Consequently, Martin felt compelled to ask for the same opportunity to brief [REDACTED] on what, for him, were still outstanding matters.

- 5.660 In the event, [REDACTED] took advice from [REDACTED] and [REDACTED] and in her letter she said, inter alia, "...you will appreciate that outside the formal grievance procedure it is not appropriate for Members of the Council to receive individual briefings from employees who are dissatisfied with the way their Directors have carried out their duties to the Council..."

- 5.661 The reasons for such a reply are understandable and I believe this was a correct response.

Conclusion: Allegation 4(C)

- 5.662 I have concluded that [REDACTED] refusal of Martin Morton's request for a Member's briefing meeting was not bullying behaviour and therefore did not lead to a denial of due process in the consideration of his of his grievance and whistleblowing allegations.

Allegation 4(D)

Correspondence/exchange of emails with Martin Morton between October 2007- December 2007 re. his whistleblowing allegations when he alleges he was bullied by [REDACTED]

- (i) refusal of his request for an investigation;
- (ii) refusal of his request for mediation via ACAS; and
- (iii) seeking an inappropriate referral to occupational health for him, without consultation;

Statement

Refusal of an investigation

- 5.663 Martin Morton contacted [REDACTED] on 2 October 2007, to ask about progress with his whistleblowing allegations. [REDACTED] replied by confirming that when Martin withdrew his grievance, on 3 July 2007, it was a natural response on the part of the Council to assume also that he was withdrawing any related whistleblowing complaint. However, when Martin confirmed that he wished his whistleblowing allegations to be investigated since, he said, it was clear they never had been, [REDACTED] indicated that an investigation had been carried out when the [REDACTED] met with [REDACTED] in order to discuss the wider issues raised at the grievance appeal.

Refusal of request for mediation

- 5.664 Martin Morton has stated in an e-mail to [REDACTED] on 7 December 2007 that he wanted to arrange for mediation of his complaints via ACAS but [REDACTED] refused.

Inappropriate referral to Occupational Health Unit.

- 5.665 In a letter to [REDACTED] on 19 November 2007, Martin Morton had referred back to his feelings after the first day of the grievance appeal hearing on 2 July 2007. In response [REDACTED] asked [REDACTED] to offer Martin an Occupational Health appointment with a view to offering him any support he may need.

Comments

- 5.666 I discussed these allegations with [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:

Refusal of an investigation

- 5.667 [REDACTED] said that Martin Morton had contacted him in October 2007 about an investigation into his complaints and he felt that Martin was *"likely to whistleblow the entire process"*. [REDACTED] said that he spoke to [REDACTED] about this and they took the view that Martin had had a full opportunity to state his case at the appeal hearing in July. [REDACTED] explained that he and [REDACTED] had agreed that Martin's case had gone to the highest level within the Council and, therefore, in the light of Martin's latest request, the question was whether Martin could now go through the whistleblowing procedure.

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5.668 In considering this question, [REDACTED] said that he and [REDACTED] had referred to an Employment Tribunal case of Parkins vs Sodexho, and [REDACTED] believed that this case clarified that where someone raises a complaint and, where this meets the definition for it to be statutorily protected, then it is in fact whistle-blowing. This means that it does not matter how the employee sought to raise it or which procedure they used – something that is statutorily protected is whistle-blowing, however it is labelled. In this case [REDACTED] had raised a complaint in work and had not labelled it as whistle-blowing and the tribunal later accepted that his actions still amounted to whistle-blowing. On this basis, [REDACTED] was making the point that Martin Morton had in fact whistle-blown within the context of the grievance procedure. [REDACTED] said he and [REDACTED] felt that Martin was trying to whistleblow the same thing which had been considered by the grievance appeal and there would be no further benefit to be served by allowing Martin to use the whistleblowing procedure. [REDACTED] felt that to agree to Martin Morton's complaints to be heard again would not add anything and he had concerns over the use of officer and member time and also concerns over precedent and employees having the opportunity to raise the same concerns twice, obviously under two different procedures

5.669 [REDACTED] further emphasised his thinking on this issue when he said there was no precedent for someone to "*have two bites at the same cherry*". Consequently, he declined Martin's request, but in doing so, he said that if there was anything which was new, he would consider it.

5.670 I asked [REDACTED] if he had been involved in discussions with [REDACTED] about his decision not to allow Martin Morton to go down the whistleblowing route and [REDACTED] stated that he had not been copied into the correspondence between them and he had no recall of any discussions with [REDACTED] about his e-mails. However, [REDACTED] thought that Martin Morton had withdrawn his whistleblowing and grievance complaints: he did recall some discussions with [REDACTED] about Martin withdrawing both aspects of his case. [REDACTED] also stated that Martin's grievance had been determined via the appeal hearing process and he and [REDACTED] had agreed on that. However, [REDACTED] could not recall the reasons why [REDACTED] had said no to Martin's request for a whistleblowing investigation. [REDACTED] also went on to say that he was strongly of the view that Martin could not re-open his grievance or reinstate it. He said that Martin could not have a change of heart about the employment aspects of his grievance.

5.671 [REDACTED] continued by stating that whistleblowing was a wider issue. In response to my question [REDACTED] did not recall any discussions with [REDACTED] about any leading cases on this subject. When I referred specifically to the case of Parkins vs Sodexho, [REDACTED] had no knowledge of this case or any discussions with [REDACTED] about it. Subsequently however, on reflection, [REDACTED] stated that he was aware of the principle established by that case but he was not sure of the relevance of the case to the issues raised by Martin Morton. He reiterated that he was just concerned that Martin Morton could not re-open the employment aspects of his grievance: on the other, non-employment issues [REDACTED] could not recall such a negative response being given. Subsequently, on reflection, [REDACTED] also stated that the wider aspects of Martin Morton's whistleblowing complaint, which related to the Department's alleged improper conduct, could be dealt with under the Council's whistleblowing procedure, as opposed to the grievance procedure. However, whether an investigation should have been instigated under that procedure was a matter for the Council's discretion after taking into account all relevant circumstances.

5.672 I asked [REDACTED] if he had been involved in any discussions about [REDACTED] replies to Martin Morton. [REDACTED] responded by confirming that he could not remember being involved in [REDACTED] replies. However, he went on to say that the investigation referred to related to Martin Morton's allegations about a particular Supported Living service provider and these had been investigated. [REDACTED] reiterated that he had sent an officer of DASS to the particular service provider to investigate their practices and [REDACTED] had met with the [REDACTED] [REDACTED] after the appeal hearing on 2 July 2007 to explain what had been done. He had explained that CSCI had been unable to find sufficient evidence to enable them to act as the regulatory body. CSCI continued to be concerned and [REDACTED] meeting had been arranged to brief [REDACTED] about the investigation process and the continued steps to secure change with the providers concerned.

Refusal of request for mediation

5.673 Martin Morton had stated in an e-mail to [REDACTED] on 7 December 2007 that he wanted to arrange for mediation of his complaints via ACAS. [REDACTED] replied to say that [REDACTED] would pick up the question of mediation/conciliation but [REDACTED] stressed that any considerations would not relate to Martin's grievance as he had withdrawn this and "*...it is therefore closed...*" [REDACTED] made it clear that, in his view, Martin's complaints were employment related and, therefore, not appropriate for mediation by ACAS. He stated that this reply was sent because

██████ was adamant that he was not going to reopen Martin's whistleblowing complaints.

Inappropriate referral to Occupational Health Unit

- 5.674 In a letter to ████████ on 19 November 2007, Martin Morton had referred back to his feelings after the first day of the appeal hearing on 2 July 2007: it was the worst night of their lives. In response ████████ asked ████████ to offer Martin an Occupational Health appointment with a view to offering him any support he may need.
- 5.675 Martin Morton had been upset by this Occupational Health referral given that his comments had been made about how he and his wife had felt several months earlier in July 2007. When asked about his view of this, ████████ stated that as Martin had reiterated these feelings from the appeal hearing in July, it was an issue which was still live in Martin's mind; hence the OHU referral. However, ████████ acknowledged that there was some misunderstanding of Martin's correspondence at this time.

Findings

- 5.676 Martin Morton wanted an investigation into his whistleblowing concerns. His e-mail to ████████ on 2 October 2007 said:

"...As you will be aware the grievance was withdrawn because of bullying and intimidation. However, I have had no feedback on where your investigation is up to in relation to whistleblowing. I am particularly interested as to whether particular matters relating to financial matters have been passed to District Audit and indeed whether particular practice issues need to be reviewed by CSCI..."

██████ stated that he and ████████ felt that Martin was trying to whistleblow the same thing which had been considered by the grievance appeal and allowing Martin to use the whistleblowing procedure would not add anything. However, it seems clear to me that Martin Morton was pursuing the whistleblowing of financial issues and not employment issues. In other words, he appears to have separated his service issues from his employment issues in making this request and was enquiring specifically about the service issues.

- 5.677 However, ████████ said he felt Martin was *"likely to whistleblow the entire process"*. Consequently he responded accordingly to say he assumed both Martin's grievance and whistleblow complaints had been withdrawn. Martin replied by confirming that the assumption that he had simultaneously withdrawn his whistleblowing allegations after withdrawing from the grievance appeal hearing was misguided.

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5.678 Consequently, [REDACTED] did not distinguish between Martin Morton's service allegations and his employment allegations. Neither did he separate these issues when considering Martin Morton's request for an investigation; nor did he, it seems to me, identify the difference between Martin's service provider concerns, his concerns over Fairer Charging and his references to the Council's "special charging policy". Consequently, I believe that the problems which were evident in the earlier grievance appeal process were still in evidence on this occasion.

5.679 Following [REDACTED] reference to it, I have reviewed the case of *Parkins v Sodexho Ltd* [2002] IRLR 109, where the EAT held that the definition of a qualifying disclosure as including "any breach of information which, in the reasonable belief of the worker making the disclosure, tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject" was drawn very broadly and included obligations arising out of the contract of employment. [REDACTED] complained that there was a lack of adequate supervision on site, which breached his contract of employment; this complaint was held to be a qualifying disclosure. I agree with [REDACTED] that it is not easy to see the relevance of the case to Martin Morton's request for a whistleblowing investigation. However, in making his reference to it, [REDACTED] seems to be saying, in effect, that it matters less what procedure is used to consider a complaint, because if the complaint meets the definition of a qualifying disclosure under PIDA provisions, then it is automatically considered to be a whistleblowing case.

5.680 It seems to me that, if this thinking were to be adopted for any or all of the Council's future whistleblowing complaints, then there may be other whistleblowing cases which are referred to the Appeals Sub-Committee under the terms of the Council's grievance procedure. In other words, [REDACTED] seems to have missed the point that the Appeals Sub-Committee has no jurisdiction in service matters and, therefore, could not have resolved Martin Morton's service complaints and nor could it do so for any future whistleblowing complaints.

5.681 [REDACTED] was clear in his view that Martin Morton could not have a change of heart on the employment aspects of his grievance: he could not re-open it or reinstate it. I agree with this because it is good practice.

5.682 [REDACTED] was also clear that whistleblowing was a wider issue. Following our initial discussion and later, on reflection, [REDACTED] has stated that these wider aspects could be dealt with under the Council's whistleblowing procedure: it was a matter for

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the Council's discretion. In the event, [REDACTED], acting on behalf of the Council, decided not to exercise this discretion.

5.683. [REDACTED] thought the investigation referred to was about Martin Morton's allegations about a particular Supported Living service provider and that these had been investigated. However, I believe this again misses the point about Martin's whistleblowing allegations covering not only service provider issues but also the Council's practice on Fairer Charging and the special charging policy. Clearly, no investigation of these Council aspects had been carried out.

5.684 I believe there was an error of judgement made in not separating Martin Morton's issues at the grievance appeal stage and this error has been repeated here. It seems to me that when Martin Morton's request for a whistleblowing investigation was made on 2 October 2007 there were three courses of action open to [REDACTED]. First, he could have accepted Martin's request and commenced the investigation in accordance with the Council's whistleblowing procedure. Second, he could have separated Martin's issues into service and employment matters and accepted his request for those service aspects, where it was valid to do so, but rejected his request for those employment aspects which had been closed by the grievance appeal hearing on 2 July 2007. Third, he could have rejected Martin's request in its entirety.

5.685 [REDACTED] decided on the last course of action. I believe this was the wrong decision made for the wrong reasons and it contributed further to the denial of due process in Martin Morton's case.

Request for mediation

5.686 [REDACTED] took the view that Martin Morton's complaints were employment related. Consequently he felt they were not appropriate for mediation by ACAS. However, he took this view because he was adamant that he was not going to reopen Martin's whistleblowing complaints i.e. those relating to both service and employment issues. As previously mentioned, I believe [REDACTED] made an error of judgement in not separating Martin Morton's complaints into service and employment issues: they were not all employment related.

5.687 However, it is the case that ACAS would not have been an appropriate body to mediate on service matters, such as those raised by Martin Morton, because ACAS offer an independent service for dealing mainly with collective disputes between groups of workers and their employers. In addition, ACAS can

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also provide an independent mediator to help resolve conflict or disputes between individual workers or between individuals and their line managers. However, it would be unusual for ACAS to be asked to mediate on an individual employment case, such as Martin Morton's, which has already been considered by the Authority's grievance Appeals Panel.

- 5.688 So, while [REDACTED] may have reached his decision for different reasons, I believe it was not inappropriate for him to refuse Martin Morton's request for mediation by ACAS.

Referral to OHU

- 5.689 In his letter of 19 November 2007, Martin Morton had referred back to his feelings after the first day of the appeal hearing on 2 July 2007: it was the worst night of their lives. [REDACTED] took this seriously and believed those events were still fresh in Martin's mind and hence [REDACTED] asked [REDACTED] to offer Martin a referral to Occupational Health. [REDACTED] did not consult Martin Morton or [REDACTED] about this decision.

- 5.690 Given the passage of time between the events of 2 July 2007 and Martin Morton's reference to them in his letter of 19 November 2007 I believe this decision to offer Martin an Occupational Health referral was inappropriate and consequently Martin Morton found it upsetting. However, I believe [REDACTED] acted in good faith but either misunderstood Martin Morton's comments or misjudged his response to them.

- 5.691 In any event, clearly [REDACTED] should have consulted Martin Morton in advance about the referral and in the circumstances I believe it was inappropriate for him to make the request without doing so.

Conclusion: Allegation 4(D)

- 5.692 I have concluded that:-

- (i) Martin Morton was denied due process in the consideration of his grievance and whistleblowing allegations by the decision not to agree his request for an investigation;
- (ii) [REDACTED] refusal of his request for mediation via ACAS was not inappropriate;
- (iii) [REDACTED] seeking a referral to Occupational Health for him without consultation was inappropriate.

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Allegation 4(E)

The Council's correspondence with Martin Morton in respect of his requests, made under the terms of the Freedom of Information Act, for information relating to the treatment of his allegations and in particular e-mails of 13/8/2009 and 9/8/2010;

Statement

- 5.693 As mentioned previously under Allegation 2(M) Martin Morton has stated that he had found e-versions of reports about his complaints which had been written by [REDACTED] which Martin felt were deliberately aimed at undermining his case. He said he had made a Freedom of Information request on 29 June 2009 in order to confirm the whereabouts of these reports and had received a reply on 13 August 2009 which had said that such reports did not exist. However, following his request for a "forensic search" the reports had later been located on the Council's server and copies were sent to him.

Comments

- 5.694 I discussed these allegations with [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:
[REDACTED]
- 5.695 [REDACTED] explained that in [REDACTED] position as [REDACTED], when responding to requests for information, [REDACTED] is obliged to rely on Departments for the information they pass to [REDACTED]: if the Department "missed something" [REDACTED] would not know. [REDACTED] also said that sometimes the applicant may follow-up by "chasing" something, in which event [REDACTED] can sometimes find copies of the relevant material elsewhere.
- 5.696 [REDACTED] stated that, prior to writing [REDACTED] original email reply to Martin Morton on 13 August 2009, [REDACTED] had been told by colleagues in both DASS and Corporate HR, as well as by colleagues in Legal Services, that they had no knowledge of the two reports under consideration. In addition, DASS could not locate [REDACTED] laptop computer on which the reports may have been produced and, consequently, the Department could not "interrogate or examine it". In the circumstances [REDACTED] was confident, at that time, that the reports did not exist.

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5.697. Later, when the reports had been located, [REDACTED] emailed [REDACTED] about them and sought his advice on whether [REDACTED] could release them. [REDACTED] confirmed that she could do so. [REDACTED] stated that what had made the difference in finding the two reports in this instance was Martin Morton's subsequent request on 13 June 2010 for a "forensic search" of the Council's data systems and [REDACTED] had thought this was a good idea. Consequently, [REDACTED] emailed a colleague in IT to request a forensic search and this had located the two reports which were identified under the two titles Martin had referred to.

5.698 I asked [REDACTED] if [REDACTED] had discussed the release of the two reports with anyone other than [REDACTED] and [REDACTED] said that [REDACTED] had spoken, informally, to [REDACTED]. [REDACTED] stated that [REDACTED] thought her DASS colleagues were trying to be helpful in locating the reports and the reason it had taken a while to do so was because too many staff colleagues had left Wirral since the reports had been written: this made the audit trail difficult. [REDACTED] felt that nobody had tried to hide the reports and, in any event, part of what was found had already been released to Martin Morton earlier.

5.699 I also then referred [REDACTED] to Martin Morton's e-mail dated 9 August 2010 when Martin said "*...I'm not shooting the messenger here but it must be utterly dispiriting that your so called loyal and honest colleagues would compromise you in such a way*". [REDACTED] responded by stating that [REDACTED] thought Martin seemed to feel that people were deliberately avoiding sending him the information he had requested. [REDACTED] added that [REDACTED] did not think this was the case: [REDACTED] said it wasn't deliberate but a case of bad timing because people had left Wirral Council. [REDACTED] went on to say that if the relevant people had still been at Wirral, getting the information to Martin that he had requested would have been easier.

[REDACTED]

5.700 [REDACTED] had previously recognized these reports in my discussions with him in July 2010 when [REDACTED] had said that [REDACTED] had asked [REDACTED] to prepare them but they had not been presented at Martin Morton's appeal hearings. The reports had actually been used as the basis for [REDACTED] letter to Martin Morton, dated 29 June 2007, which set out the [REDACTED] response to Martin's original grievance.

5.701 However, when [REDACTED], e-mailed [REDACTED] on 12 August 2010, with a copy of the report entitled "MM - Grievance Analysis" [REDACTED] had stated that [REDACTED] had checked his files and could not see anything like the report referred to. When I spoke to [REDACTED] again about this he confirmed that [REDACTED] thought that he may have confused the report sent to [REDACTED] by [REDACTED] with a different report prepared by [REDACTED] which was in the file handed to [REDACTED] by [REDACTED] when he left the Council. [REDACTED] went on to say that, alternatively, [REDACTED] may simply have made a mistake when replying to [REDACTED] on 12 August 2010.

Findings

5.702 Martin Morton was aware of these two reports but because they had no reference; no date and no author's name he was not aware of who had written them: hence his FOI request on 29 June 2009 for details of them.

5.703 Consequently [REDACTED] consulted [REDACTED] colleagues in DASS with Martin Morton's description of the reports and received replies which indicated that the senior managers [REDACTED] contacted were not familiar with them. On this basis [REDACTED] replied to Martin on 13 August 2009.

5.704 When subsequently Martin Morton made his further request on 13 June 2010 he included a fuller description of the two reports and [REDACTED] again consulted her colleagues in order to locate them. At that point the only DASS colleague who recognised the description of the reports was [REDACTED], who confirmed that the description related, in fact, not to two reports but to one report with subsections, which had been written by [REDACTED] and had been used as the basis for [REDACTED] letter of 29 June 2007 to Martin Morton. Subsequently, based on a forensic search using key words, this report which was entitled "MM- Grievance Analysis," had been found. Before [REDACTED] sent a copy of the report to Martin Morton [REDACTED] decided to circulate a copy asking for confirmation that it was the report described by Martin Morton. This is when [REDACTED] said [REDACTED] had not seen the report because [REDACTED] had confused the report sent to him by [REDACTED] with a different report prepared by [REDACTED] which was in the file handed to [REDACTED] by [REDACTED] when [REDACTED] left Wirral.

5.705 It seems that in this case it had been difficult to locate the reports in the first instance, not least because [REDACTED] was no longer an employee of the Council and, quite properly, as confidential documents, the reports had not been widely circulated in DASS. It is worth remembering that it was [REDACTED] and [REDACTED] who dealt with Martin's grievance issues personally.

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5.706 When the reports were located they turned out to be one document with subsections, and copies were immediately sent to Martin Morton.

5.707 In the circumstances, I believe [REDACTED] is correct that nobody was trying to hide the reports, but the staffing changes in DASS which have occurred since these papers were written made the audit trail more difficult than it would otherwise have been. Consequently, I do not think this is an example of inappropriate behaviour which has led to Martin being bullied.

Conclusion: Allegation 4(E)

5.708 I have concluded that the Council's handling of Martin Morton's requests made under the terms of the Freedom of Information Act for information relating to the treatment of his allegations is not an example of bullying behaviour, or an abuse of power.

Other claims

5.709 As mentioned in section 2, in addition to his allegations of bullying and abuse of power, Martin Morton has also made other claims which, in view of their nature, I felt required examination. These are references to potentially very serious matters and in view of their possible significance to Martin Morton's case I felt that it was important to examine them. The results of my investigation of these claims are shown below:-

Allegation 5(A) - Nepotism

Statement

5.710 Martin Morton has stated as follows:

"The Halton Mafia"

"When I worked for DASS this widespread perception (of nepotism) was reflected in persistent references to "the Halton Mafia" and "The Junta"

I assume the former term is, no doubt, a reference to the high proportion of appointees from Halton Council that followed in the wake of [REDACTED] appointment to Wirral DASS..."

5.711 While Martin Morton has made a reference to nepotism, I have interpreted his claim on a somewhat broader basis than a strict meaning of the word would allow. As I understand it, nepotism refers to someone using their position or influence to gain favours or an unfair advantage for members of their own family.

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However, I have treated Martin Morton's claim as one referring more to the issue of favouritism being shown in appointments within DASS to friends and former colleagues rather than to family members.

Comments

5.712 I discussed these allegations with [REDACTED], [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.713 [REDACTED] commented that [REDACTED] had been asked to respond to this point in 2005 when a series of such allegations had been investigated and reported to Elected Members. [REDACTED] stated that a satisfactory conclusion had been reached.

[REDACTED]

5.714 [REDACTED] recalled that these allegations were about appointments that were all in [REDACTED] service. However, [REDACTED] recalled that he [REDACTED] met with Elected Members, probably informally, about these allegations and they were resolved satisfactorily: all the appointments were made properly. [REDACTED] felt that this was "*not a sinister issue*".

[REDACTED]

5.715 [REDACTED] confirmed that this issue referred to a point in 2005 when, following a Departmental restructure in 2004, there had been a crop of appointments made. [REDACTED] stated that appropriate procedures had been followed in all cases. There had been Panel appointments involving the [REDACTED], [REDACTED], and [REDACTED] and [REDACTED] felt that these arrangements would stand scrutiny. [REDACTED] emphasised that not all of those appointed had come from Halton BC.

Findings

5.716 [REDACTED] was formerly employed by Halton BC. As [REDACTED] pointed out, following a Departmental restructure in 2004, DASS made a series of appointments to a number of posts in the new structure. Shortly after this happened, i.e. later in 2005, an anonymous letter appeared in the Wirral Globe which made reference to the appointment of a number of officers from Halton BC. In order to clarify matters and to address the concerns expressed in the anonymous letter, [REDACTED] held meetings with the [REDACTED] [REDACTED] for the Social Care and Health Select Committee and separately with the [REDACTED] [REDACTED] for Social Services. He reported to them the

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arrangements for the appointments to the new structure, which had been made by a panel comprising himself, [REDACTED] as [REDACTED], and [REDACTED]. Following this series of discussions, in a letter to [REDACTED], dated 22 February 2006, [REDACTED] stated that Elected Members were "now satisfied that in acknowledging some of the general assertions in the letter, there is no substance to specific allegations about management behaviours, or abuses of procedures and policy ...(and) the matter is now regarded as closed".

5.717 It is clear that following the Departmental restructure in 2004 there were several appointments made to the new structure and a number of these involved officers from Halton BC. It is also clear that the allegations of favouritism which these appointments gave rise to were examined informally in [REDACTED] discussions with Elected Members who were satisfied that there was no substance to them and the matter was closed. I do not believe there is any need to examine this matter any further.

Statement

5.718 Martin Morton has stated as follows:

Letter of apology

"I can also recall... a female member of the DASS Finance Section who was sent a letter of apology from [REDACTED] after claims of nepotism in relation to recruitment practices were found to be proven"

Comments

5.719 I discussed this allegation with [REDACTED] and [REDACTED]. Details are shown below:

[REDACTED]

5.720 [REDACTED] stated that that the suggestion that he had written a letter of apology, in the circumstances described, to a female member of the Finance section was incorrect. He stated that he had letters from Elected Members reporting their complete satisfaction regarding all matters.

[REDACTED]

5.721 When I spoke to him, [REDACTED] had no recollection of a letter of apology being sent to a female member of the Finance section, but later produced a copy of a letter from [REDACTED] dated 10th April 2008.

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Findings

- 5.722 The letter from [REDACTED] was written to an officer in DASS and related to a meeting of the Appeals Sub-Committee on 27 March 2008 which had considered a grievance appeal from the officer concerned. The Sub-Committee had upheld the appeal and found that the process for appointing candidates to the post which the appellant applied for did not comply with the Council's recruitment procedures and was therefore flawed.
- 5.723 The appeal concerned the appointment to the post of [REDACTED] [REDACTED] and the letter confirmed the action which DASS was taking in respect of the decision made by the Sub-Committee. This included providing refresher training to the officers who were members of the Appointments Panel who had made this appointment. The letter included an apology for the way in which the appellant's application for the post had been handled. The letter also confirmed that the matter was now closed. Given that this matter was dealt with by the Appeals Sub-Committee, as described, I do not believe there is any need to examine this matter any further.

Conclusion: Allegation 5(A)

I have concluded that in the case of both alleged examples of nepotism/favouritism by Officers, the allegations were examined at the time they were made and resolved by Elected Members and, consequently, there is no need to examine them further.

Allegation 5(B) Pay-off to a Whistleblower

Statement

- 5.724 Martin Morton has stated that:

"...The tendency to lower the profile of AP (Adult Protection) concerns in relation to XXX (a service provider) was consistent. The most striking example of this complicity was the "paying-off" of [REDACTED] [REDACTED] [REDACTED] who, having whistleblown to [REDACTED] about XXX (a service provider) was, I understand, paid [REDACTED] in June 2005.

Comments

- 5.725 I discussed this allegation with [REDACTED] and [REDACTED]

Details are shown below:

██████████

5.726 ██████████ said that this was one of the allegations he had referred to as Martin Morton's "*spurious allegations*" at the appeal hearing on 2 July 2007. The allegation was that a former temporary employee, who had been a whistleblower over issues concerning the supported living service, had been "paid-off". ██████████ stressed that having read the file of the employee concerned, who was not employed by DASS, he had confirmed that the employee had not been "paid off".

██████████

5.727 ██████████ recalled a dispute over the termination of the employment contract for an employee in the Supporting People Section of the Council's former Regeneration Department. He could not recall the details but did not believe that the dispute resulted in a Compromise Agreement being drawn up.

Findings

5.728 When I made my enquiries into this allegation it related, as ██████████ had suggested, to the six month temporary employment of a former employee in the former Regeneration Department. He had been appointed for the period from 16 May until 31 October 2005 to the post of ██████████ ██████████ ██████████ and, not long after his appointment commenced, there was a dispute between himself and his Departmental managers concerning comments made at his induction, which resulted in him being suspended from duty in accordance with the Council's disciplinary procedure. It appears that the disciplinary case was not resolved because the employee went on sickness leave and did not return. In the event, it seems that his entitlement to sick pay expired on 3 August 2005 and on 5 September 2005, in accordance with the terms of his contract, he was given two months notice of termination to take effect on 31 October 2005. The employee chose not to return to work during his period of notice and this was accepted. Consequently, he was paid two month's salary to the end of his contract in the normal way, together with a payment in lieu for his entitlement to nine days outstanding annual leave, which was added to his final salary. In the circumstances, it seems that the termination of his employment did not involve the payment of any additional amount outside the terms of the employment contract or the signing of a Compromise Agreement. Consequently, I do not believe the employee was "paid-off" as suggested.

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Conclusion: Allegation 5(B)

I have concluded that the termination of the employment contract of the employee concerned did not involve the payment of any additional amount which could be regarded as a "pay-off" payment.

- 5.729 Having reached the conclusion of my Investigation Findings I have included a Summary of Allegations and the conclusions I have reached in each case at Appendix 6. My overall conclusions, which are drawn from these Investigation Findings, are set out in section 6.

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6 OVERALL CONCLUSIONS

6.1 I have been asked to investigate the treatment of Martin Morton in relation to his allegations of abuse of power/bullying in order to establish whether he was subject to any bullying or other inappropriate behaviour by any officer, Elected Member or the Council as an organisation. To do this, I have based my investigation on the definitions previously mentioned i.e.

- Bullying – Personal behaviour
- Bullying – Collective behaviour
- Abuse of power – Denial of due process (Departmental) and
- Abuse of power – Denial of due process (Corporate)

6.2 I have conducted my investigation in accordance with the Council's HBV policy which states *"when investigating the complaint, it is important to take account of the feelings of the complainant in terms of what has happened. What is offensive and unacceptable behaviour is up to the recipient to determine"*. I have borne this in mind throughout my investigation.

6.3 Martin Morton stated to the Audit and Risk Management Committee on 25 November 2009 that he suffered *"..enduring, sustained and co-ordinated abuse of power on the part of senior officers of Wirral Council.."* He has also maintained that the basic premise of his grievance is that he was treated in a detrimental way because he would not desist from trying to address concerns in relation to Supported Living schemes. He has stated that his grievance is about the way he was treated detrimentally for trying to do his job while the whistleblowing aspect of his submission detailed the specific concerns he had persistently raised.

6.4 Consequently, his grievance concerns both service issues and employment issues and for the purposes of my investigation his employment issues have been grouped into the four categories of types of behaviours mentioned, which include fifty separate instances or examples of his allegations of when and how he has been treated detrimentally.

6.5 I have examined each of these instances or examples and, therefore, necessarily my investigation has been comprehensive and, I believe, thorough. I have been concerned to ensure that I have kept an open mind and made my judgements of the facts on their merits and that I have been fair and equitable to everyone who has taken part.

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- 6.6 As I have said previously, I do not expect everyone to agree with my findings or the conclusions I have reached as a consequence of them. But I trust they will be able to see how I have reached the conclusions that I have. It may be that Martin Morton's perspective of these events, and that of some of the Council's senior managers, is different from the perspective I hold and I accept that such a different perspective may lead them to different conclusions. However, based on my judgement of what is reasonable and, where appropriate, the balance of probabilities I have reached my conclusions accordingly.
- 6.7 Overall, I have concluded that of the fifty instances or examples of Martin Morton's allegations there are (i) a number where I have found them to be substantiated, (ii) a number where I believe they are not substantiated, and (iii) two where there is insufficient information on which to draw a conclusion. All of these outcomes are discussed under Allegation Findings at para. 6.32 onwards.
- 6.8 At the same time, while conducting this investigation, there have been several key themes which have emerged and which I have taken into account in my consideration of Martin Morton's case i.e. Departmental culture, working relationships, communications, Martin Morton's role, the role of HR and the issue of hindsight. These are discussed next.

Departmental culture

- 6.9 The starting point for a change in the Departmental culture in DASS, during Martin Morton's employment period, was the appointment of [REDACTED] as Director in 1998. The Department was going into special measures and was one of the ten worst in the country. [REDACTED] felt that some staff were good at their jobs while others needed clear leadership which he had provided. As the [REDACTED], [REDACTED] believed it was important to adopt a strong hierarchical approach in order to deliver services and to manage people to meet good standards and good practice. Consequently, [REDACTED] was a "stickler" for protocol and he took a very determined line concerning managers' behaviour and how they spoke to each other. He felt it was important to avoid being sloppy about such matters.
- 6.10 This approach was coupled with a degree of formality to staff communications and, in Martin Morton's case, this formality was reflected in the use of e-mail and memoranda with the accompanying perception of the management style as being non-person centred i.e. brusque, off-hand and dismissive of others.

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- 6.11 We all perceive other people in our own way: it's a matter of style and chemistry. Some staff would feel comfortable within such a Departmental culture while others would not. Martin Morton was, I believe, clearly one of those who did not feel comfortable in this setting.

Working relationships

- 6.12 It is perhaps a statement of the obvious but there was a long period of decline in the working relationship between Martin Morton and his senior managers in DASS. This decline was borne out of the Departmental culture and also differences in style and personality which led to a lack of sympathy for and/or understanding of each other's respective point of view. This led in turn to increasing mistrust between the parties and to suspicions creeping in about the motives behind each others actions. In due course, this decline led to a complete breakdown of trust and confidence between Martin Morton and his employer, as represented by DASS' senior managers, and inevitably, it culminated in Martin's departure from the Council in April 2008.

- 6.13 As has been noted, Martin Morton is passionate about service users' rights and he accepts that his views on professional issues' and events can be at one end of the continuum: managers can find this both challenging and demanding. Consequently, successful working relationships with Martin Morton require managers to be particularly skilful and well organised in order to retain their focus on the task. It seems in DASS' case that these skills were either not present, or were not applied appropriately to working relationships with Martin Morton. Consequently, the working situation deteriorated over time and both parties became increasingly frustrated and "switched off" from each other. In such circumstances, it is possible to see how such increasing frustration can lead to changes in attitude and behaviour, which can then cause officers to lose sight of good practice in terms of how they conduct their working relationships.

- 6.14 In the specific circumstances of Martin Morton's whistleblowing and grievance complaints, it seems to me that DASS senior managers tried initially to address Martin's concerns with an informal approach. However, they did not accept his stance on service issues and because communications between them were poor, they never clearly or truly explained their position to him or convinced him about it.

- 6.15 It also seems clear that working relationships deteriorated sharply as a result of Martin Morton's experience in representing DASS at a Housing Benefit Tribunal in October 2006. He had felt

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particularly unsupported over this event and had a 'stressful and humiliating' experience on the day.

6.16 It is also clear that working relationships suffered a further deterioration in May 2007 on Martin Morton's return to work when [REDACTED] became his [REDACTED]. There was, of course, already a poor relationship between them following [REDACTED] "dogsbody" remark and this was never corrected. Not only that, both [REDACTED] and [REDACTED] have acknowledged that [REDACTED] management style was never strong enough to meet the demands of the situation both he and Martin Morton found themselves in. Consequently, the inevitable happened and things got much worse.

6.17 A significant contribution to this deteriorating situation was made by [REDACTED] decision to distance [REDACTED] from Martin Morton i.e. to have as little contact with him as possible. This lack of communication was compounded over the question of providing HR support for Martin Morton during the period of his grievance submission: [REDACTED] thought [REDACTED] had offered this, while [REDACTED] did know it was available. As a consequence Martin Morton received no such support.

Communications

6.18 Communications between Martin Morton and his senior managers has been a recurring theme of the investigation. Communications are, of course, a key feature of the working relationship. In this particular case, communications are noted more by the breakdown which occurred as was accepted by [REDACTED] in his letter to Martin Morton of 12 March 2007, when he said *"...there has been a breakdown in communication between you and your line managers. You have raised issues and for various reasons, some defensible others not, feedback has not been given to you or has not been quick enough or an explanation of the process being followed by the Department given..."* It seems clear that there was very little dialogue between the parties: as has been noted, it was more the case that there were two monologues conducted at a distance usually through the formal medium of email and memorandum.

6.19 In the circumstances, it is perhaps not surprising that by January 2008 [REDACTED] and Martin Morton had all had enough. [REDACTED] was at her "wits end" and [REDACTED] was removing himself from the situation altogether, while Martin Morton went off sick and did not return. There was a total breakdown in communications and in working relationships which, as a result, contributed to a fundamental breach of trust and confidence between the parties.

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Martin Morton's role

- 6.20 As already mentioned, Martin Morton has stated that he accepts that his views on professional matters can be at one end of the continuum and he doesn't necessarily expect others to agree with him or see things as he does. He accepts that others will be at other points on the continuum and consequently will have different views of the same issues/events from himself and will form different opinions of those issues/events.
- 6.21 Also, Martin Morton was a good manager, who was very person-centred, and he put service issues before everything else, including himself. Clearly, he was not an average colleague and managing a successful working relationship with him was perceived to be a difficult thing to do.
- 6.22 It is also clear that with the change in Departmental culture Martin Morton began to find it difficult to fit in with the new style. He began raising his service concerns in 2001 and over time, for the reasons already discussed, working relationships with his senior managers went into terminal decline. As this deterioration in relationships progressed Martin Morton became more determined to see things through to a culmination and became a "thorn in DASS' side" over his grievance complaints.
- 6.23 With this deterioration in working relationships over time, attitudes on both sides hardened. In Martin Morton's case he became more difficult to manage, as evidenced by (i) his e-mail to [REDACTED] dated 5 April 2006 when he said *"...I am getting increasingly frustrated and concerned that this Department is not giving this matter the profile and priority it should. Is the [REDACTED] aware of the degree of concern?"*; (ii) his withdrawal from the accreditation process, also in April 2006, when he wrote his e-mail to [REDACTED] and copied it to several other colleagues; and (iii) his return to work on 4 May 2007 at very short notice. Consequently I believe that the change in Martin's attitude to DASS also contributed to some extent to the progressive deterioration in working relationships and the eventual breakdown of trust and confidence between the parties.

Role of Human Resources

- 6.24 I have found that the role of the HR function in Martin Morton's case has been minimal. While in theory the HR function has resources available to provide support to the grievance process and the participants in each case, there was no attempt to provide such support to Martin Morton at any stage.

6.25 While HR resources have been available, particularly in DASS, the response of the HR function has been reactive not proactive. If Martin Morton did not request any HR support, no thought was given to offering any. This was the case despite the fact that Martin Morton was not represented during the progress of his grievance complaints and had no experience or insight into what to expect.

6.26 I believe the HR function has two key roles in matters of grievance issues. Both involve taking the initiative when necessary in order to make things happen. First, HR should seek to ensure that the parties find a resolution i.e. a means to secure closure, which not only meets the needs of the complainant, but also the needs of the authority in (i) discharging its obligations to the employee; and (ii) protecting the Council's interests and reputation as a good employer. It seems to me that in this particular case the officers involved should have asked themselves, what it was going to take to sort out this grievance: and then worked backwards from there. Rather than simply follow procedure, there could have been an attempt at securing a resolution via mediation as part of the informal process. However, there was no effective dialogue to this end either departmentally or corporately.

6.27 Second, HR should provide welfare support, as may be necessary, to the employee to ensure that their participation in the grievance process is effective and, by doing so, ensure there is a commitment from the employee to the outcome of their grievance. It is clear that neither of these things happened and I believe there are lessons to be learned here.

Issue of hindsight

6.28 Martin Morton was appointed as Supported Living Development Officer in 2000. He began raising his concerns over service providers in March 2001 and continued persistently until he lodged his grievance submission on 18 September 2006.

6.29 Consequently, there is a long history to the chronology of this case and, with the benefit of hindsight, it is possible to see the denouement of events and to understand what happened and why. It is also pragmatic, as appropriate, to make allowances for the way in which these events developed at the time. I have followed this approach in making my own judgements of what has happened.

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6.30 Also, it is worth noting that, during the course of my investigation, and as reflected in this report, some officers have said that, with the benefit of hindsight, they may have done things differently or, equipped with the knowledge they have now, after the Martin Morton case, that perhaps they would deal with any similar cases differently in the future. It appears that this case has been a learning experience for some officers and such learning can only be good for themselves and the Council's future practice.

6.31 It is against this background that my judgement of Martin Morton's allegations has been made.

Allegation Findings

6.32 In reaching my overall conclusions on my findings in respect of each allegation, I have set out my comments according to the same groupings of types of behaviour already used. They are shown below.

1. Bullying - Personal Behaviour

Personal behaviour involves 1:1 contact between the person alleged to be bullying and the recipient and relates to personal actions which can be verbal, non-verbal and/or written.

6.33 I have been mindful that Martin Morton's complaints are about individual senior officers of the Council in their personal working relationships and behaviour towards him. Such allegations are potentially very serious personal matters. It is also important to be aware that, although some of the incidents examined under this category of personal behaviour occurred over 6 years ago in 2004 and others in 2006, this is the first time that they have been independently investigated in this way. Martin Morton's grievance submission on 18 September 2006 included references to them but, of course, his appeal was withdrawn before it was concluded and, consequently, the Appeals Sub-Committee never got to the bottom of these comments made to him.

Allegations 1 (A) – 1 (I)

6.34 Overall, I have concluded that there are three examples of personal behaviour which I believe was inappropriate and which resulted in Martin Morton being bullied. These are:

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Allegation 1 (A) At a management meeting on 4 March 2004 when [REDACTED] said "Martin, what do you actually do?";

Allegation 1(D) At a management meeting on 4 November 2004 when [REDACTED] commented that Martin Morton was "just a dogsbody";

Allegation 1(E) I have concluded that while [REDACTED] request to Martin Morton to "put his moral considerations to one side" may not be bullying behaviour, DASS' failure to consider the formal channel of the whistleblowing policy for Martin Morton's service complaints was inappropriate behaviour which contributed to a denial of due process in Martin Morton's case.

6.35 In the case of allegations 1(B), 1(C), 1(H) and 1(I), I have not found conclusive evidence of inappropriate or bullying behaviour. In the case of allegations 1 (F) and 1 (G) the evidence available to me has been inconclusive.

6.36 Consequently, I believe there is the need for the Council to give consideration to all of these findings, but particularly those under allegations 1(A), 1(D) and 1(E) which are discussed further under Officer roles and responsibilities at para 6.69 onwards.

2. Bullying – Collective Behaviour

Collective behaviour involves two or more people, often departmental colleagues, who take part in joint or concerted action which undermines or otherwise adversely affects an individual.

6.37 In considering this category of collective behaviour, I have been struck by the apparent co-ordination of DASS' response to Martin Morton's claims. When I spoke to [REDACTED] about the allocation of work to Martin Morton he said he had discussed this with his service colleagues, particularly [REDACTED], with whom he had agreed a way forward. He reiterated this point when he said that if he did not manage Martin Morton as Martin had wanted, it was not because [REDACTED] management style was lacking, but because "it was now the DASS' view of the situation"

6.38 [REDACTED] said that by September 2007 he was planning [REDACTED] [REDACTED] from the Council and so he didn't continue to be involved in deciding what Martin Morton should do. It seems to me to be clear that he had been involved prior to this period.

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6.39 In my opinion, it also seems clear, therefore, that the decision not to allow Martin Morton to attend Adult Protection Strategy meetings, together with the decisions to change the allocation of his work, indicate that DASS' senior managers, collectively, were concerned to gain control of the situation and, not necessarily for objective or organisational reasons, as evidenced by my findings.

6.40 I have also been struck by the decision in May 2007 to deny Martin Morton access to service files relating to a service provider. Martin Morton made the reason for his request clear: it was related to his grievance appeal hearing on 23 May 2007. However, the question arises as to how Martin Morton could be expected to "fight his corner" in the appeal if he had to prepare his case based only on memory?

6.41 It seems to me that this brings consideration of this issue back to the basic tenet of Martin Morton's case i.e. if Martin's service based complaints had been separated from his employment complaints and dealt with according to the appropriate procedure i.e. the whistleblowing procedure, then the question of his request for access to service files in support of his grievance would not have arisen. Under the whistleblowing procedure there would have been an independent investigation and consequently, there would not have been the need to deny him access to such files. On the contrary, I believe it would have been clear that a request to access service files to support a service-based whistleblowing complaint would have been seen to be both legitimate and reasonable. Consequently, I believe Martin Morton suffered a "double-whammy" on this issue: first, there was an inappropriate use of the incorrect procedure and, secondly, he was denied access to relevant information with which to argue his case.

6.42 I also believe, on this point about a lack of separation of the issues, that there was a similar failure to separate the issues at corporate level when, in November 2007, [REDACTED] refused Martin Morton's request for an investigation of his whistleblowing complaints. This is discussed further at para. 6.62.

Allegations 2(A) – 2(P)

6.42 With these points in mind, overall, I have concluded that there are seven examples of collective behaviour which, I believe, was inappropriate and which resulted in Martin Morton receiving detrimental treatment. These are:

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- Allegation 2 (B) DASS discussions with Martin Morton in May/June 2007 when he was given an instruction not to attend Adult Protection Strategy meetings resulted in his continuing professional exclusion and isolation;
- Allegation 2 (D) Changes to Martin Morton's work allocation and the way those changes were introduced, which had a detrimental effect on him, resulting in his further isolation and exclusion from the Department;
- Allegation 2 (G) By being denied access to supported living service files in May 2007;
- Allegation 2 (H) [REDACTED] inappropriate behaviour in the manner in which he handled the shredding of documents relating to Martin Morton which further damaged Martin Morton's trust and confidence in his senior managers;
- Allegation 2 (J)(i) Following reported unfair criticism of Martin Morton by a service provider, [REDACTED] suggestion that Martin Morton should contact his trade union was a failure to give him support;
- Allegation 2 (L) The breakdown in communications between DASS and Martin Morton which contributed to a deterioration in working relationships and a fundamental breach of trust and confidence between himself and his employer;
- Allegation 2 (P)(i) [REDACTED] reference to gross misconduct and the Council's disciplinary procedure, in his letter to Martin Morton of 16 November 2007, was threatening and is an example of inappropriate behaviour which undermined him;

6.43 In the case of allegations 2(A), 2(C), 2(E), 2(F), 2(I), 2(J)(ii), 2(K), 2(M), 2(N), 2(O) and 2(P)(ii) I have not found conclusive evidence of inappropriate or bullying behaviour.

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- 6.44 Consequently, I believe there is the need for the Council to give consideration to all of these findings, but particularly those under allegations 2(B), 2(D), 2(G), 2(H), 2(J), 2(L) and 2(P)(i) which are discussed further under Officer roles and responsibilities at para. 6.69 onwards.

3. Abuse of power – Denial of due process (Departmental)

Bullying is a form of abuse of power. For the purpose of this investigation the term abuse of power is used here to describe the improper or inappropriate use of authority by someone who has that authority because they hold a particular office.

- 6.45 In the conduct of this investigation it has become clear to me that DASS' approach to Martin Morton's grievance has been poor. Other staff have mentioned the same issue in relation to their own grievances. I say this because the essence of successfully dealing with grievances is to find a resolution i.e. a means to secure closure, as speedily as possible.
- 6.46 In Martin Morton's case he submitted his formal grievance on 18 September 2006: he received no acknowledgement. It was not until after he had written to the [REDACTED] that he received a request from [REDACTED], on 14 October 2006, to attend a discussion on 6 November 2006. Following a series of inconclusive informal "problem solving" meetings it was not until 5 February 2007 that a formal grievance hearing was held.
- 6.47 The Council's grievance procedure applies time limits to the various stages of the procedure e.g. a meeting is to be arranged within 10 working days to discuss a written grievance; and a response is to be provided in writing by the management side within 10 working days of the meeting. Sensibly, the grievance procedure also allows for these time limits to be varied, at any stage of the procedure, provided the variations are mutually agreed.
- 6.48 Clearly, these time limits were not adhered to, primarily because DASS was seeking to address Martin Morton's grievance via an informal process. It was not until January 2007, when Martin Morton withdrew from the informal process, that the first formal hearing was arranged for 5 February 2007. Such a delay, from September to February, I suggest, raises a query about DASS' commitment to finding a solution and securing closure to Martin Morton's grievance.

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6.49 There was a similar pattern established in November 2007 when Martin Morton submitted his second grievance about having no work to do. At the problem solving meeting on 28 November 2007 he was promised:

- (i) a job description;
- (ii) a discussion on working styles; and
- (iii) a follow up meeting within a month.

None of these things happened and the only conclusion, I think, there is to be drawn from this is that DASS' senior managers had clearly demonstrated their lack of commitment to the grievance process.

6.50 The other significant concern which emerges from consideration of this category of Martin Morton's allegations is that involving his request to DASS for an investigation of his whistleblowing complaints. Martin Morton made this request clear to DASS in an email to [REDACTED] on 27 February 2007 when he stated his intention *"of invoking the whistleblowing procedure and will be contacting the [REDACTED] detailing my dissatisfaction with the grievance procedure in terms of unreasonable delay and as a means of addressing my concerns.."* Unfortunately DASS did not take up the point Martin Morton was making. There was no discussion of the need to separate the issues and no discussion of which of the Council's policies and procedures should be used to address them i.e. the whistleblowing procedure for service issues and the grievance procedure for employment issues.

6.51 This point about procedure is an important one because, as previously mentioned, there are good reasons for having separate procedures to deal with separate concerns. To confuse the procedure to be used is to compromise consideration of the case. Service issues can never be resolved via the grievance procedure and, should anyone seek to do so via this route, it is likely that it will result in a denial of due process. It seems to me that key officers who provide advice on these matters at both departmental and corporate levels need to know and understand this point if they are to meet their professional obligations to their officer colleagues and discharge their responsibilities to the Elected Members who consider such issues. The particular issue to note here is that, in my view, it does not matter whether Martin Morton should subsequently be proved right or wrong about his service concerns, the fundamental point is that, in the consideration of his complaints, justice must not only be done, but must also be seen to be done. I do not believe this fundamental point could be met by using the incorrect procedure for the consideration of Martin's complaints. Consequently, it seems to me that the application of such knowledge and

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understanding has been conspicuous by its absence in this particular case.

Allegations 3(A) – 3(D)

6.52 Consequently, overall I have concluded that there are three examples, I believe, of inappropriate behaviour/abuse of power at the Departmental level which have resulted in a denial of due process by the Council, as an organisation, in its consideration of Martin Morton's grievance claims. These are:

Allegation 3 (A) DASS' consideration of Martin Morton's formal grievance submitted on 18 September 2006, as evidenced by delays and a lack of a resolution;

Allegation 3 (B)(ii) DASS' lack of consideration of Martin Morton's request for a whistleblowing investigation which denied him due process in the consideration of his grievance;

Allegation 3 (C) DASS' failure to deliver (i) a job description; (ii) a discussion of working styles; and (iii) an agreed follow-up meeting, as promised, in the consideration of Martin Morton's grievance about having no work to do, which has denied him due process in relation to his claims.

6.53 In the case of allegation 3(B)(i) and 3(D) I have not found conclusive evidence of inappropriate or bullying behaviour.

6.54 Consequently, I believe there is the need for the Council to give consideration to all of these findings but particularly those under allegations 3(A), 3(B)(ii) and 3(C) which are discussed further under Officer roles and responsibilities at para. 6.69 onwards.

4. Abuse of Power – Denial of due process (Corporate)

6.55 In taking his complaints to the Appeals Sub-Committee, Martin Morton felt that he had taken his case as high as he possibly could. He said that he "gave up" explaining his case to [REDACTED] and wanted to say what he had to say to the Elected Members. Consequently, his expectations of the outcome of the appeal hearing were high. However, he came away from the hearing feeling he had not had a full and proper hearing of his case. It suggests that the reasons for this are to be found in the

events of the day and these have previously been examined under allegation 4 (B) which considered Martin Morton's claims of (i) an alleged threat of being sued for defamation; (ii) an alleged personal attack; (iii) an alleged lack of a declaration of interest by Panel Members; (iv) Advisers allegedly having a previous involvement in the case; (v) witnesses not being allowed to speak; and (vi) Martin Morton feeling traumatised by the days events.

6.56 In my consideration of all of these matters I have found that there is one key issue which, I believe, undermines the Council's consideration of Martin Morton's grievance claims and which, to a significant extent, may explain the cause of his sense of dissatisfaction with the appeal process. It is that the grievance appeal hearing is not the appropriate forum for dealing with the majority of Martin Morton's concerns i.e. those involving service issues.

6.57 In his letter of appeal, dated 2 March 2007, Martin Morton made it clear that the matters pertaining to his grievance which were outstanding related to:

- Unethical/illegal practice including widespread and prolonged collusion with abuse;
- Gross maladministration;
- Financial mismanagement; and
- Bullying;

These are, of course, service related issues apart from that relating to bullying which is employment related. Martin Morton's letter also said that he felt a resolution to his grievance lay in referring his concerns for scrutiny by an external body, preferably the Audit Commission. His extensive bundle of papers issued to the Appeals Panel expanded these points.

6.58 Added to this basic position, is the clear evidence that there was no separation of these service issues from employment issues at the appeal hearing and there was a lack of advice provided to the Panel members about such important matters.

6.59 The result of this position was that the Advisers to the Panel wanted to ensure that the hearing dealt only with those aspects which they perceived properly fell within the parameters of the grievance procedure. There was a view that Martin Morton could express his views on such service matters but the hearing was not a trial of the [REDACTED] service decisions. Consequently, the Panel encouraged Martin Morton and his witnesses to concentrate on those aspects of his case which focussed upon how he was treated rather than those aspects which amounted

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to criticism of the way in which the [REDACTED] had dealt with external service providers; or how he had applied Fairer Charging within the Council's policy arrangements. In my view, this meant that, based on his letter of appeal and his bundle of papers, the overwhelming majority of Martin Morton's whistleblowing/grievance complaints were not and, but for the withdrawal of his case, would not have been accepted by the appeal hearing.

6.60 Based on such an approach to the appeal, I suggest that it is important to be aware of the Council's arrangements to ensure that good practice is applied in such matters as grievance appeals. It appears that there are few, if any, appropriate organisational/governance arrangements in place: it is a matter of an officer responsibility to give advice on the day, which is shared by the Advisers to the Panel.

6.61 With this in mind, as previously mentioned, I believe it is also important to reflect on the obligations and responsibilities that there are on officers in key positions, at various levels of the organisation, to give appropriate advice to colleagues and Elected Members in the "build up" to such matters as a grievance appeal hearing. It seems clear that as at Departmental level, none of these obligations and responsibilities were properly met in the appeal hearing of Martin Morton's case.

6.62 It also seems to be clear that this lack of separation of service and employment issues was repeated later in October/November 2007 when Martin Morton wrote to [REDACTED] to enquire about progress with his whistleblowing allegations. When faced with the range of Martin Morton's whistleblowing/grievance complaints and with his previous knowledge of them, [REDACTED] had one of three courses of action open to him when he received Martin Morton's email of 2 October 2007 i.e. (i) accept the request being made and commence the whistleblowing investigation; (ii) separate the issues into service and employment issues and commence the whistleblowing investigation into the service issues but not the employment issues; or (iii) reject the request in its entirety. I believe that the appropriate decision would have been to separate the issues and commence the investigation of the service issues only and take no further action in respect of the employment issues. However, as we have seen, this was not the decision taken: [REDACTED] decided to reject Martin Morton's request in its entirety and I believe this was a decision which repeated the error previously made and continued the denial of due process in this case.

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Allegations 4(A) – 4(F)

6.63 Consequently, overall I have concluded that there are three examples of inappropriate behaviour/abuse of power at the corporate level which, I believe, have resulted in a denial of due process by the Council, as an organisation, in its consideration of Martin Morton's grievance claims. These are:

Allegation 4 (B) The lack of separation of service and grievance issues at the appeal hearing on 2 July 2007 which led to a denial of due process by the Council, as an organisation, in the consideration of Martin Morton's case;

Allegation 4 (D)(i) [REDACTED] refusal, in November 2007, of Martin Morton's request for a whistleblowing investigation of his concerns which denied Martin Morton due process in the consideration of his grievance and whistleblowing allegations.

Allegation 4(D)(iii) I have also reached a similar conclusion in relation to [REDACTED] referral of Martin Morton to the Occupational Health Unit without consultation with him. This was inappropriate behaviour which undermined him.

6.64 In the case of allegation 4(A), 4(C), 4(D)(ii), and 4(E) I have not found conclusive evidence of inappropriate or bullying behaviour.

6.65 Consequently, I believe there is the need for the Council to give consideration to all of these findings, but particularly those under allegations 4(B), 4(D)(i) and 4(D)(iii) which are discussed further under Officer roles and responsibilities at para. 6.69 onwards.

Other claims

Allegation 5(A) Nepotism

"The Halton Mafia"

6.66 It is clear that following the Departmental restructure in 2004 there were several appointments made to the new structure and a number of these involved officers from Halton BC. It is also clear that the allegations of favouritism, which these appointments gave rise to, were examined informally in [REDACTED] discussions with Elected Members who were satisfied that

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there was no substance to them and the matter was closed. I do not believe there is any need to examine this matter any further.

Letter of Apology

- 6.67 The grievance appeal which led to a letter of apology being written, concerned the appointment to the post of [REDACTED] in DASS and the letter confirmed the action which the Department was taking in respect of the decision made by the Sub-Committee. This included providing refresher training to the officers who were members of the Appointments Panel who had made this appointment. The letter included an apology for the way in which the appellant's application for the post had been handled. The letter also confirmed that the matter was now closed. Given that this matter was dealt with by the Appeals Sub-Committee, as described, I do not believe there is any need to examine this matter any further.

Allegation 5(B) Pay-off to a Whistleblower

- 6.68 When I made my enquiries into this allegation I found that the termination of the employee's contract did not involve the payment of any additional amount outside the terms of the employment contract or the signing of a Compromise Agreement. Consequently, I do not believe there is any need to examine this matter any further.

Officer roles and responsibilities

- 6.69 Having considered the conclusions reached in respect of each of the allegations made by Martin Morton, I believe it is necessary to reflect on the role and responsibilities of the officers involved with those allegations. In saying this, I am referring specifically to those allegations where I have found there to be examples of inappropriate behaviour which has resulted in bullying and/or a denial of due process in the consideration of Martin Morton's grievance/whistleblowing complaints. I am also conscious that not all of these officers are still employed by the Council. However, for the sake of a complete understanding of the roles and responsibilities of the officers involved in this matter, I have made my comments accordingly. They are set out below.

Bullying - Personal behaviour

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- 6.70 As my investigation findings have shown, I have found that there has been inappropriate personal behaviour in Martin Morton's case on the part of [REDACTED] under allegations 1(A) and 2(J)(i); [REDACTED] under allegation 1(D); [REDACTED] under allegation 2(H) and [REDACTED] under allegation 2(P)(i).
- 6.71 There can be no allowances made or mitigation for bullying: it is inexcusable, unacceptable and should not be tolerated. It is also important to note that it is unacceptable to condone bullying behaviour under the guise of a particular management style. Although these instances of bullying were not pursued by Martin Morton at the time, it is the case that even long after the bullying may have occurred, the question still arises as to personal accountability for one's actions.
- 6.72 At the same time, while bullying is not dependent on an intention to cause distress, but is assessed by the impact the behaviour has on the recipient, it is important to consider the issue of intent in order to make an assessment of the appropriate action to take. In other words, consideration of whether there has been an intention to bully or not points to the issues of the officer's conduct or capability and the possible course of the corrective action to take in each set of circumstances.
- 6.73 It is also important to consider whether these instances are isolated incidents which have occurred as a product of the specific circumstances of Martin Morton's case, or whether they are part of a wider pattern of behaviour on the part of the individual officers concerned. Such information provides an important contextual background to this matter of personal accountability. However, the answer to this wider question is outside the scope of this investigation.
- 6.74 Also, the question of the passage of time since these events occurred needs to be considered. For the sake of clarity, I do not mean that the passage of time may remove or dilute the issue of personal accountability, but rather it may be a consideration in the judgement of the appropriate action to take. Similarly, with the passage of time, consideration also needs to be given as to whether the behaviour of the officer alleged to have bullied has changed over the period of time involved. A judgement of such a wider question can be made by examining whether there are or have been any other proven similar claims or allegations made against the individual officer concerned. Again such a judgement is outside the scope of this investigation but it is worth noting that if there were no other such cases then it would suggest that these instances are more likely to be isolated to Martin Morton's case. On the other hand, a record of other proven cases would suggest a pattern of behaviour which is unacceptable.

Bullying - Collective behaviour

- 6.75 I have also found that there has been inappropriate collective behaviour on the part of DASS under allegations 1(E); 2(B); 2(D); 2(G); 2(L).
- 6.76 The point to note here is that while the action was taken by individuals, it was part of a coordinated approach taken on behalf of the Department which had the effect of undermining or otherwise adversely affecting Martin Morton.
- 6.77 As with the personal category of behaviour, there can be no allowances made or mitigation for such collective behaviour: it should not be tolerated. Similar considerations as to the issue of accountability for these actions need to be made.
- 6.78 Consequently, consideration of the appropriate action to take in the light of my investigation findings is particularly important. Where there has been no intention of bullying, then a remedy may lie in terms of the capability route i.e. in assessing the individual officer's training needs and devising an appropriate personal development programme. However, where there has been a deliberate intention to bully then the remedy lies in the Council taking appropriate disciplinary action against the officer concerned. In such an event the question of whether the Council can retain its trust and confidence in that officer is also a matter for consideration.
- 6.79 In the light of my investigation findings, these are the judgements which the Council now needs to make in determining the appropriate action to take in each individual case of personal/collective bullying behaviour.

Abuse of power- Denial of due process (Dept'l/Corporate)

- 6.80 As my investigation findings have shown, I believe I have found that under allegations 3(A); 3(B)(ii); 3(C) and 4(B); 4(D)(i) and 4(D)(iii) there has been inappropriate behaviour/abuse of power at both the Departmental and Corporate levels which has resulted in a denial of due process by the Council, as an organisation, in its consideration of Martin Morton's grievance claims.
- 6.81 For good practice to be applied in the governance of the Council's arrangements for employees' grievances and appeals, there are obligations on officers in key roles at various levels in the organisation to give appropriate advice to their colleagues who

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are engaged with grievance and/or whistleblowing cases in order to get things right. These obligations are:

<u>Colleague</u>	<u>Key Officer</u>
(i) Employee	Departmental HR officer;
(ii) Departmental Director	Departmental HR officer;
(iii) Chief Executive	[REDACTED];
(iv) Appeals Sub-Committee	Joint responsibility: [REDACTED] [REDACTED]

The Departmental HR officer, [REDACTED] and [REDACTED] all have an important strategic contribution to make in ensuring that the Council meets the standards of good practice when dealing with grievance and/or whistleblowing cases.

6.82 If these obligations are met then the Council's arrangements to (i) discharge its obligations to the employee; and (ii) protect its interests and reputation as a good employer are safeguarded. However, for these arrangements to work successfully requires those officers in these key roles to make judgements of each case as it arises.

6.83 In Martin Morton's case, as we have seen, the judgement which was required concerned the recognition that this was no ordinary grievance case: indeed, for the most part it was not a grievance case at all. However, this strategic, "top-down" judgement was not made at any stage. Instead, it seems to me that at best the officers followed routine procedures and practices and either made incorrect assumptions that the grievance procedure was appropriate or decided that the case had to be listened to in full before a judgement could be made on its suitability for consideration as a grievance. This latter view is, I think, particularly flawed not least because, as this case clearly demonstrates, there is no guarantee that the case will go to a full hearing.

6.84 What I suggest is required in such matters is a strategic "top-down" judgement, at the outset, of the suitability of the case to proceed under whichever procedure is proposed. If this had been made correctly in this case there would have been a separation of Martin Morton's service and employment issues, followed by his grievance appeal hearing on employment issues (such as alleged bullying) and there could then also have been an internal investigation of Martin Morton's whistleblowing complaints carried out by Internal Audit in accordance with the Council's whistleblowing policy. In other words, in my view, the outcome which was achieved on service issues in 2009 could actually have been achieved in 2006/07 with the consequential benefits to the

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Council in terms of reduced time, cost and effort expended in the aftermath of Martin Morton's case, as well damage limitation for the Council's reputation for competence.

6.85 However, one of the basic problems here is that there does not appear to be any satisfactory governance arrangements in place to guard against such a thing happening again i.e. the Council has no organisational memory or competence in place which means it does not need to rely on an individual officer's judgement on the day of an appeal. This matter is considered further in Section 7 on recommendations.

6.86 In the absence of such arrangements it is particularly important to be aware of the outcome which can occur when this strategic "top-down" judgement is either not made or is made incorrectly. In fact Martin Morton's case is the prime example of what can go wrong: the "fallout" for the Council has been unprecedented. In such circumstances, it seems to me that it needs to be borne in mind that officers in senior management posts, including those already mentioned, are expected to have enough vision to think ahead and anticipate where the case before them may lead. They are paid according to the level of responsibility they carry: in other words, they are paid to get the big decisions right. The measure of the level of responsibility involved can be easily judged by the degree of "fallout" which occurs when things do go wrong. In this particular case, I suggest it was vitally important for the officers to (i) recognise the nature of Martin Morton's claims and deal with them accordingly; and (ii) anticipate what would be likely to happen if they did not secure closure to his whistleblowing/grievances complaints. Neither of these things happened and the "fallout" has occurred.

6.87 In fact, I take the view that in this case things went wrong at every stage of the process i.e.:

- (i) At Departmental level when there was no recognition of the need to separate the service and employment issues;
- (ii) At Corporate level (a) on 2/3/2007 when consideration was given to Martin Morton's letter of appeal; (b) on 23/5/2007 at the Appeal hearing which was adjourned to enable DASS to reply in full to Martin Morton's list of questions, the majority of which related to service issues; and (c) on 2/7/2007 when there was no separation of the service and employment issues.

- 6.88 In other words, there were several opportunities for the officers in these key roles to get their advice right but, I believe, on each occasion they got it wrong. Even at the late stage of November 2007 there was a further opportunity to retrieve the situation when [REDACTED] could have separated the issues and agreed to Martin Morton's request for a whistleblowing investigation of his service complaints. However, even this opportunity was missed. In all instances the effect was the same: Martin Morton received detrimental treatment.
- 6.89 The reasons for this detrimental treatment need to be considered. As with the previous category of Personal/Collective behaviour the question of personal accountability arises. Reflection on this matter similarly brings into consideration the issue of intent. It seems to me that, at Departmental level, the principle reason for the lack of separation of the service and employment issues, which led to a denial of due process to Martin Morton, lies in the lack of proper understanding and awareness and, therefore, consideration of the Council's Whistleblowing policy in such matters as Martin Morton's complaints. [REDACTED] and [REDACTED] never gave the Whistleblowing policy a thought, even when requested to do so. This was an error of judgement which had a clear detrimental effect on Martin Morton.
- 6.90 Consequently, the question arises as to whether it was an error of judgement borne out of ignorance or one based on wilfulness. In other words, it is a question of whether it is a matter of capability or conduct. On the one hand, there was a clear lack of understanding of the role and purpose of the whistleblowing policy, but on the other hand, a clear intention not to use the policy even when Martin Morton made his request to do so.
- 6.91 Similarly, at the Corporate level, the same question of personal accountability arises for the officers involved here. In this particular instance, detrimental treatment of Martin Morton arose over (i) [REDACTED] consideration of Martin's letter of appeal; (ii) [REDACTED] and [REDACTED] lack of advice on separating the issues at the appeal hearings on 23 May and 2 July 2007; and (iii) [REDACTED] refusal of Martin Morton's request for a whistleblowing investigation in November 2007. Once again, reflection on this matter brings into consideration the issue of intent.

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- 6.92 It seems to me that, in the first instance, when considering Martin Morton's letter of appeal, [REDACTED] had no prior knowledge of Martin Morton's case so there would have been no intention to deny Martin Morton due process: the decision he took was a poor decision which had its "knock-on" effect. Secondly, the principle reason for the lack of advice to the Appeals Panel meetings on 23 May and 2 July 2007 on the need for a separation of the service and employment issues lies in the fact that, on [REDACTED] part, he said he thought Martin Morton's case was about employment issues only and, therefore, he intended to let matters run their course; while on [REDACTED] part he intended to let Martin Morton have his say before reaching a decision on the employment issues and sending the service issues back to the Lead Member and [REDACTED]. Again, these were, I believe, poor decisions but I do not think they were intended to deny Martin Morton due process.
- 6.93 However, by the time the third instance arose in November 2007, attitudes had hardened and [REDACTED] refusal was borne out of an increasing frustration with Martin Morton and, because of this, I believe [REDACTED] lost sight of good practice. He was determined not to have any further investigation.
- 6.94 As with the previous category of personal/collective behaviour, consideration of the appropriate action to take in the light of these investigation findings concerning abuse of power-denial of due process, is important. Where there has been no intention of denying Martin Morton due process then a remedy may lie in terms of the capability route i.e. in assessing the individual officer's training and development needs. However, where there is a judgement that there has been a deliberate intention to deny due process, then the remedy lies in the Council taking appropriate disciplinary action against the employee concerned. In such circumstances, again, it is also matter for consideration as to whether the Council can retain its trust and confidence in the officers involved.
- 6.95 These are the judgements which, I believe, the Council now needs to make in determining the appropriate action to take in each individual case of abuse of power - denial of due process.

Remedy

- 6.96 I commenced my Overall Conclusions by stating that Martin Morton told the Audit and Risk Management Committee that he suffered "*..enduring, sustained and co-ordinated abuse of power on the part of senior officers of Wirral Council*". While there are a significant number of Martin Morton's allegations where I have not found this to have been established, I believe my investigation has shown a number of other instances or examples where I have found that this claim has been substantiated. There are, in my opinion, several instances or examples of Martin Morton receiving detrimental treatment by the Council, as an organisation, in its consideration of his whistleblowing/grievance complaints. Consequently, in addition to the judgements which need to be made about officers' roles and responsibilities in this matter, in the light of these findings, I think it is also appropriate for the Council to consider its obligations to Martin Morton. In these circumstances the question also arises as to whether the Council should consider an appropriate remedy for its treatment of him. This matter is discussed in section 7.

7 RECOMMENDATIONS

7.1 My recommendations are set out below.

Policies and procedures

7.2 The Council has established policies, procedures and practices in place to address any complaints which may be made by its employees. These are:-

- (i) Stop Harassment, Bullying and Victimisation in the Workplace Policy (HBV policy);
- (ii) Grievance Procedure; and
- (iii) Confidential Reporting (Whistleblowing) Policy;

In light of the experience of conducting this investigation I believe there is scope for improvements to be made to these policies and procedures.

7.3 There is, of course, always the potential for overlaps to occur in the consideration of all forms of employee complaints, whether they relate to employment matters; complaints about harassment and bullying; issues of discrimination in matters of equality and diversity; or issues where service matters have gone wrong. I believe this investigation has shown the importance of ensuring the correct procedure is used for all employee complaints and, in such circumstances, it is very important to be clear on what each policy and procedure is designed to do. It is also important to be clear about the overlaps and cross-references which occur in individual cases.

7.4 Some examples of the matters to be considered are set out below.

Stop Harassment, Bullying and Victimisation in the Workplace Policy (HBV Policy)

7.5 The Council's HBV policy does not specify how complaints which are received should be dealt with. It states that complaints should be made to the employee's line manager, who together with the Departmental Harassment Contact Officer, in liaison with HR where appropriate, will help the employee to decide how best to deal with the matter. There is no reference to a specific harassment/bullying investigation stage but the policy does say that the Council's Disciplinary Procedure should be used to deal with incidents.

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- 7.6 The Policy also says that, if the complainant is dissatisfied with the outcome of their complaint, they are entitled to pursue the matter through the Council's Grievance Procedure. In the event of disciplinary action being taken in respect of a harassment/bullying complaint, e.g. against the person accused of harassment/bullying, it is clearly not appropriate for that action to be the subject of a grievance appeal by the complainant. If it is intended that the complainant should have a right of appeal against the outcome of their complaint, this matter needs to be clarified within the terms of the HBV policy.

Grievance Procedure

- 7.7 The Council's Grievance Procedure is based on a standard model and provides three formal stages for written grievances to be heard. It also applies time limits of ten days for consideration and completion of each formal stage with the comment that these time limits may be varied by mutual agreement.
- 7.8 Prior to the submission of a written grievance, the procedure also encourages an informal approach to resolving the grievance via the ongoing supervisory process. If an issue remains outstanding from the supervisory process, employees have the right to refer such issues through the formal procedure. However by its nature, such an informal approach is not considered to be part of the formal grievance procedure: in DASS this is referred to as the "problem solving meeting". While it is the case that an employee can withdraw from this initial informal approach and submit a formal grievance, as we have seen in this case, this informal approach can be very lengthy and, in practice, it can become an ineffective substitute for the formal stages. In fact, in Martin Morton's case, the informal problem solving meetings only commenced after he had submitted his formal written grievance.
- 7.9 According to the Grievance procedure, once a formal written grievance has been submitted, it should be the case that the informal approach should have been concluded and the three formal stages should then be followed. However, in order to avoid confusion and delays in future cases, it is a simple matter to include a suitable time limit for the completion of this informal, problem solving stage within the comments in the procedure.
- 7.10 Separately, stage three of the procedure is an appeal to the Appeals Sub-Committee and the procedure states that in the event of a failure to agree the parties may approach ACAS with a request for conciliation. Bearing in mind that the Appeals Sub-Committee is an Elected Member panel only, it is not clear how a failure to agree could be recorded. If it is intended that an

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employee who is dissatisfied with the outcome of the appeal hearing should be able to approach ACAS for conciliation about the Panel's decision, this should be made clear.

- 7.11 The procedure is silent on the question of mediation and it may be appropriate to consider mediation as part of the informal process. Mediation is a voluntary process and an independent Mediator will seek to help the parties in dispute attempt to reach an agreement and resolve the problem. Agreed time limits can be applied for the mediation process. If mediation is undertaken it would be by agreement and on the clearly understood basis that the Grievance Procedure would be suspended pending the outcome of mediation. Independent Mediators could be drawn from an internal/corporate panel of suitably trained officers and/or external sources.

Confidential Reporting (Whistleblowing) Policy

- 7.12 Knowledge and understanding of the Council's Whistleblowing Policy is at a low level. In particular, officers did not understand the role and purpose of the policy or how it related to the Grievance procedure in the circumstances of Martin Morton's case. Errors of judgement on procedural matters have been very clear.
- 7.13 In light of Martin Morton's case, there was an attempt at addressing this issue in 2009 when a comment was added to both the Whistleblowing policy and the Grievance procedure in order to clarify the differences between a whistleblowing complaint and an employee grievance. While this has been an improvement on previous arrangements I believe there is still scope for greater precision in what is said in order to make the position as clear as possible. I would suggest a modification to the existing text on the following lines:

Whistleblowing policy

Please note: Whistleblowing occurs where an employee has a concern about the Council's business matters which adversely affects service users, employees, and/or the public and is a matter of public interest. This means that if you believe there is wrongdoing or malpractice in your workplace you can report this by following the correct procedure. It is not possible to provide a complete list of all the issues which may be subject to a whistleblowing complaint but these could be improper, unethical, illegal or negligent behaviour by anyone in the workplace which involves e.g.:

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- *Service or policy issues;*
- *Maladministration or financial impropriety;*
- *Criminal offences;*
- *Failure to comply with a legal obligation;*
- *Miscarriages of justice;*
- *Damage to the environment; and/or*
- *A deliberate attempt to cover up any of the above.*

Whistleblowing does not include anything to do with an employee's own employment position or contract e.g. terms and conditions of employment etc. The Council's grievance procedure should be used for these complaints.

Grievance Procedure

Please note: A grievance occurs where an employee has a concern about her/his own employment position or contract. This means that if you have a concern about your work or working environment you can report this by following the correct procedure. It is not possible to provide a complete list of all the issues which may be subject to a grievance complaint but the more common types of grievance you might want to raise could involve:

- *Your terms and conditions of employment (excluding grading);*
- *Your working conditions or health and safety matters;*
- *New working practices or organisational changes which have adversely affected you;*
- *Disagreements with co-workers;*
- *Not getting your statutory employment rights.*

Grievances do not involve anything to do with business matters which adversely affects service users, and/or the public e.g. service or policy issues; maladministration or financial impropriety; criminal offences; etc. The Council's Whistleblowing policy should be used for these complaints.

- 7.14 In addition to this suggested change to both the Whistleblowing policy and the Grievance procedure, it is worth noting that currently the grievance procedure makes reference to complaints about relationships at work being one of the more common types of grievance but does not mention any separate policy and procedure arrangements which exist for addressing such complaints about harassment and bullying at work i.e. the

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HBV policy. I believe this is also a matter for clarification as soon as possible.

RECOMMENDATION 1

That the improvements to the Council's policies and procedures, as specified above, be made as soon as possible.

Training and Development

- 7.15 When such improvements have been made to all three policies and procedures it will be important to publicise them widely across the Council via internal corporate media channels. In addition, it will also be important to review the Council's current training and development programme to ensure that sufficient priority is being given to a full understanding and awareness of the role, purpose and use of all three policies and procedures. This will be particularly important for key groups of officers who have official roles to play in the successful application of the policies in individual cases e.g. line managers; HCO's; HR staff; and senior officers who are advisers to Elected Members when they consider such matters as employee complaints.

RECOMMENDATION 2

That the Council's training and development programme is reviewed to ensure that sufficient priority is being given to a full understanding and awareness of the role, purpose and use of the Council's Grievance Procedure; the Stop Harassment, Bullying and Victimisation in the Workplace Policy; and the Confidential Reporting (Whistleblowing) Policy.

Role of Human Resources

- 7.16 The HR function has two key roles in matters of grievance issues. First, ensuring that the parties find a resolution i.e. a means to secure closure, which not only meets the needs of the complainant, but also the needs of the authority in (i) discharging its obligations to the employee; and (ii) protecting the Council's interests and reputation as a good employer. Second, HR should provide welfare support, as may be necessary, to the employee to ensure that their participation in the grievance process is effective and, by doing so, ensure there is a commitment from the employee to the outcome of their grievance.

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Proactive role

7.17 Bearing in mind that neither of these things happened in Martin Morton's case I believe that it is important for the Council's conduct of future cases that both issues are addressed. First, it is a matter of all HR Officers, who have a role to play in such matters as complaints from employees, understanding the role and purpose of the Council's policies and procedures for dealing with these matters. HR Officers need to understand the proactive nature of the role they are there to play. Prevention is better than cure and HR's role is to support the Council in achieving its goals by advising and assisting departmental managers and colleagues to avoid staffing problems which would obstruct the achievement of those goals. Where prevention has not been possible and a complaint has been made, this means HR Officers taking an active part in such matters in order to have a clear view of how to resolve them. It also means taking the lead in situations where it is clear that a resolution is not emerging from discussions. This role is not dissimilar from that of mediation which is mentioned under the Grievance procedure. In my view, HR officers are well placed to provide a panel of Mediators who are independent of the two parties in dispute ie the employee and the Departmental management representative, and with suitable training and development, HR could provide a valuable resource to support the Council's formal procedures.

7.18 Consequently, I believe HR should seek, as necessary, to broker a solution in order to secure closure to a complaint. An HR staff capacity building programme should be devised, as appropriate, in order to develop this role.

Welfare support

7.19 Second is the matter of welfare support for employees engaged in a staff complaint. The Council's HBV policy recognises that it is important to appreciate the distress and anger which may be felt by employees experiencing harassment or bullying at work. But it is also important to bear in mind that, by their very nature, allegations of abuse of power/bullying and harassment may result in all those involved i.e. the complainant, those against whom allegations are made and witnesses, experiencing emotional reactions to their experiences. It is essential, therefore, that the Council's response to these situations is both understanding and supportive.

7.20 Consequently, I believe it would be helpful to all parties involved in a formal investigation of a complaint, or in a grievance appeal, to have access to explanatory information, guidance and support which is issued to them at the outset of the formal process

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involved. This information should set out the nature of the procedure being used and the processes which accompany it and explain what is expected to happen at each of the formal stages of the process.

- 7.21 This explanatory guidance should extend to the nature of the Appeals Sub-Committee's hearing of the case so that all employees know what to expect and can better prepare for the occasion.
- 7.22 The assistance of an HR Officer, who is not involved in the details of the case or in supporting the meetings which take place to discuss it, should also be made available to any employee who may need personal advice on the various aspects of the full process.

Job description review arrangements

- 7.23 On a separate note involving the HR function, it became apparent during my investigation that Martin Morton's job description was silent on the subject of any changes which may need to be made to it from time to time. It is not clear whether this is typical for job descriptions in DASS or more generally across the Council. However, in the context of the need for local authority services to keep pace with change, and consequently organisational structures and jobs to change with them, it is standard practice for job descriptions to reflect this requirement for change by including a paragraph about appropriate review arrangements. Such a paragraph should make it clear that over time the nature of individual jobs will change and that the Council will expect to revise its job descriptions accordingly. I would suggest that a paragraph is included, as necessary, in all job descriptions, which is on the following lines:

"The details contained in this job description reflect the content of the job at the date it was prepared. It should be remembered, however, that it is inevitable that over time, the nature of individual jobs will change, existing duties may no longer be required and other duties may be gained without changing the general character of the duties or the level of responsibility entailed. Consequently, the Council will expect to revise this job description from time to time and will consult with the postholder at the appropriate time."

RECOMMENDATION 3

- (a) That the Council's HR function adopts a more proactive role in matters of employee complaints by seeking to ensure that the parties find a speedy resolution i.e. a means to secure closure, which not only meets the needs of the complainant, but also the needs of the authority in (i) discharging its obligations to the employee; and (ii) protecting the Council's interests and reputation as a good employer;
- (b) That all parties involved in a formal investigation of a complaint, or in a grievance appeal, should have access to explanatory information, guidance and support which is issued to them by the appropriate Departmental HR Officer at the outset of the formal process involved. This information should set out the nature of the procedure being used and the processes which accompany it and explain what is expected to happen at each of the formal stages of the process;
- (c) The assistance of an HR Officer, who is not involved in the details of the case or in supporting the meetings which take place to discuss it, should also be made available to any employee who may need personal advice on the various aspects of the full process;
- (d) That a standard paragraph, as specified above, concerning appropriate review arrangements should be included in all Council job descriptions in order to make it clear that over time the nature of individual jobs will change and that the Council will expect to revise its job descriptions accordingly.

Corporate governance arrangements

- 7.24 One of the basic problems which has emerged in Martin Morton's case is that the Council does not appear to have any satisfactory governance arrangements in place to guard against a repeat of the errors of judgement in procedural matters which have occurred. The Council has no organisational memory or competence in place which means that it does not need to rely on an individual officer's judgement on the day of an appeal. Consequently, I believe the Council's approach to whistleblowing and grievance matters would benefit from strengthening corporate governance arrangements.
- 7.25 To address this issue, I believe what is required is a corporate "filter mechanism", whereby a strategic judgement is made at the outset of each whistleblowing or grievance case as to the suitability of the case to proceed under whichever procedure is proposed.

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Whistleblowing policy

7.26 At the moment the Whistleblowing Policy states that *"Where you have concerns about a possible malpractice and it is not possible to raise them through other procedures such as a grievance procedure, it will be your own choice as to whom you approach: normally you should approach your line manager in the first instance. (Alternatively)...you may approach one of the following responsible officers:*

- *Chief Executive;*
- *Deputy Chief Executive and Director of Corporate Services;*
- *Head of Legal and Member Services;*
- *Your Departmental Chief Officer;*
- *Your Departmental Confidential Reporting Officer;*
- *Council's Internal Audit in the Finance Department...."*

Concerns may be raised verbally or in writing.

7.27 It seems to me that the Council's existing approach places the emphasis on the individual employee to decide for themselves how and where they will report their whistleblowing concerns. Employees have a multiple of choices and, while they are encouraged to approach their line manager in the first instance, it is recognised that this may not be appropriate due to the nature of the complaint. There does not appear to be any single or corporate dimension to coordinating these arrangements.

7.28 Consequently, the effect of these current arrangements means that there can be whistleblowing complaints made to a variety of officers in different departments with the potential for a variety of different treatments applied to them on behalf of the Council as a whole. From the Council's corporate point of view this appears to be a fragmented and uncoordinated approach which can have consequences for the quality of the outcome achieved.

7.29 With the experience of Martin Morton's case in mind, what the Council cannot afford to happen is for these arrangements to result in a whistleblowing complaint being dealt with as a grievance or, however unlikely it may appear to be, a grievance being dealt with as a whistleblowing case.

7.30 What I believe is needed is a "top-down" strategic approach to coordinating these matters which can be achieved by replacing the existing arrangements with a number of changes. These changes are suggested below:

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Monitoring Officer

7.31 First, bearing in mind the potential nature of whistleblowing cases, I suggest there is a corporate role to be played by the Council's Monitoring Officer who should be given overall responsibility for the successful operation of the Whistleblowing Policy by acting as the focal point for all whistleblowing concerns. This role would include:

- (i) Acting as the Nominated Officer to receive all whistleblowing complaints and determining, with the other officers mentioned in the policy, as appropriate, the arrangements to be made for addressing or investigating each complaint;
- (ii) Coordination and overall supervision of each whistleblowing complaint and investigation;
- (iii) Preparing a performance management report on a regular basis, at least annually, to the appropriate Lead Member/Committee of the Council, including the appropriate Overview and Scrutiny Committee, with a variety of casework management data including the number/type of cases dealt with and the outcome achieved;

Casework Coordinator

7.32 In support of the Monitoring Officers role, there should be an officer in a corporate HR role who would provide a "filter mechanism" for all staff complaints, i.e. whistleblowing; grievance; and harassment/bullying. This role would include:

- (i) Receiving and examining all staff complaints which are proposed to be submitted to the Council's Appeals Sub-Committee in order to determine the suitability of the case to be dealt with in accordance with either the Grievance procedure or the HBV policy;
- (ii) Liaising with Departmental colleagues, as appropriate, in making the appropriate decision and subsequent arrangements for the case to proceed;
- (iii) Acting on behalf of the Monitoring Officer, as required, in the discharge of her/his responsibilities for whistleblowing cases, including liaison with colleagues, as appropriate, in determining the arrangements to be made for addressing or investigating each complaint;

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- (iv) Maintaining a Casework Management Register for all staff complaints received under all procedures, which facilitates the coordination and overall supervision of each grievance, HBV and whistleblowing complaint and investigation;
- (v) Overseeing the quality control of all cases in the Casework Management Register in order to facilitate the performance management reporting system;

Casework Management system

- 7.33 Currently no systematic approach to casework management is used although data about departmental grievances is gathered periodically. To facilitate the corporate coordination of staff complaints, as suggested here, it will be important to develop a casework management system which involves close liaison between the HR officers involved in casework i.e. the Casework Coordinator and Departmental Investigation Officers. The specific tasks to be completed by the officers in these roles can be specified as part of the system. This casework management system includes the creation of a Casework Management Register which would contain details of the progress of each case under consideration at both departmental and corporate levels including (i) Name; (ii) Department; (iii) Investigating Officer; (iv) Date of submission of complaint; (v) Current status i.e. stage of formal process and date stage commenced; (vi) Comments re. progress (or otherwise) of the case. To maintain the Register it will be necessary for the Casework Coordinator to gather data from Departmental Investigating Officers on a regular basis, at least quarterly, in order for her/him to oversee the quality control of all cases.

Whistleblowing reporting arrangements

- 7.34 As mentioned previously, whistleblowing concerns currently may be raised verbally or in writing. If the changes suggested are accepted and the Council's Monitoring Officer is given overall responsibility for the successful operation of the Whistleblowing Policy, the current reporting arrangements may also need to change and the opportunity could be taken to make them more user friendly and, by doing so, perhaps encourage employees who have whistleblowing concerns to report them. In these circumstances, consideration could be given to providing a variety of reporting methods including (i) an online facility via the Council's intranet; (ii) a dedicated confidential contact telephone number/helpline; (iii) a dedicated e-mail address; and (iv) a confidential internal postal address. These are matters for the Council's consideration.

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RECOMMENDATION 4

That the Council strengthens its corporate governance arrangements for dealing with employees' complaints in all forms under the (i) Stop Harassment Bullying and Victimisation in the Workplace Policy; (ii) Grievance Procedure; and (iii) Whistleblowing Policy, as specified above.

Allegation Findings

Officer Roles and Responsibilities

- 7.35 In the light of my investigation findings, I suggest there are a number of judgements which the Council now needs to make in determining the appropriate action to take in the case of each allegation. Consequently, I believe there is the need for the Council to give consideration to all of these findings, but particularly those where it takes the view that officer responsibilities have not been met;

Allegation 5(A) Nepotism/Favouritism

I have concluded that in the case of both alleged examples of nepotism/favouritism by Officers, the allegations were examined at the time they were made and resolved by Elected Members and, consequently, there is no need to examine them further.

Allegation 5(B) Pay-off to a Whistleblower

I have concluded that the termination of the employment contract of the employee concerned did not involve the payment of any additional amount which could be regarded as a "pay off" payment and, consequently, I do not believe there is any need to examine this matter any further.

RECOMMENDATION 5

That the Council gives consideration to all of the Investigation Findings but particularly those where it takes the view that Officer roles and responsibilities may not have been met.

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Remedy

- 7.36 Having established my investigation findings and drawn my conclusions based on them, I believe it is appropriate, in the light of these findings, for the Council to consider its obligations to Martin Morton. In these circumstances the question arises as to whether the Council should consider an appropriate remedy for its treatment of him.
- 7.37 Employers have a legal duty of care to all employees. Behaviour which can be construed as bullying, harassment and/or victimisation, and the failure to deal with such incidents or allegations, can expose the employer and individual employees to a number of legal consequences. The Council's HBV policy recognises this legal position when it says:

"The Authority is responsible for the actions of its staff as well as the individual staff (sic) being responsible for their own actions. If harassment takes place in the workplace the Authority may be liable and may be ordered to pay compensation unless it can be shown that it took reasonable steps to prevent harassment. Individuals who harass may also be ordered to pay compensation."

- 7.38 Martin Morton left the Council in April 2008 after signing a Compromise Agreement. He was paid a sum of [REDACTED] in full and final settlement of his employment claims against the Council. At that point there had been an irretrievable breakdown in working relationships and a fundamental breach of trust and confidence between him and the Council as his employer.
- 7.39 As I believe my investigation findings have shown, it was the Council's consideration of his grievance/whistleblowing claims which let Martin Morton down. Therefore, in these circumstances, dependent upon the outcome of the Council's consideration of my investigation findings and conclusions, there are a number of possible courses of action which the Council could consider taking which range from (i) taking no action at all; (ii) giving Martin Morton a formal apology; and/or (iii) offering him a suitable compensation payment. Whether any and/or which of these possible courses of action is the most appropriate to take is a matter for the Council to determine.

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RECOMMENDATION 6

That, in the light of the Investigation Findings, the Council considers its obligations to Martin Morton and determines whether it should consider an appropriate remedy for its treatment of him.

7.40 This concludes my Investigation report.

MARTIN SMITH

Independent Associate Consultant
North West Employers

31 March 2011

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Wirral Council

Report of an investigation into the treatment of Martin Morton in
relation to his allegations of abuse of power/bullying

APPENDIX 1

OUTLINE CHRONOLOGY OF EVENTS

31 March 2011

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REPORT OF AN INVESTIGATION INTO THE TREATMENT OF MARTIN
MORTON IN RELATION TO HIS ALLEGATIONS OF ABUSE OF
POWER/BULLYING

OUTLINE CHRONOLOGY OF EVENTS

Martin Morton commenced his employment with Wirral Council in 1990. In order to assist with an overall understanding of Martin Morton's case, I have prepared an outline chronology of events. This is set out below:

- 2000: Appointed as Supported Living Development Officer.
- 2001 – 2006: Consistently raised concerns over service issues related to Supported Living.
- July 2006: [REDACTED] confirms DASS has no statutory powers to intervene in such service issues. Advises Martin Morton to put "*moral considerations to one side*". Martin Morton considers resignation, but advised by trade union to submit his whistleblowing grievance complaints.
- 11 August 2006: Commences lengthy period of sickness absence.
- 18 September 2006: Submits formal whistleblowing/grievance complaints to DASS. No acknowledgement received.
- 10 October 2006: On trade union advice, submits formal grievance to [REDACTED].
- 14 October 2006: [REDACTED] requests discussion of formal grievance on 6/11/2006.
- 6 & 28 November & 18 December 2006: Series of informal "problem solving" meeting held. No resolution of the formal grievance.
- 4 January 2007: Withdraws from informal approach and [REDACTED] invites Martin Morton to "*set out the questions you wish the [REDACTED] to address*".

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OUTLINE CHRONOLOGY OF EVENTS...cont'd

- 17 January 2007: Martin Morton e-mails his 10 questions to [REDACTED]
- 5 February 2007: Formal hearing of whistleblowing/grievance complaints.
- 27 February 2007: Martin Morton invokes the whistleblowing procedure re unreasonable delay in grievance process and as a means of addressing his concerns.
- 2 March 2007: Letter of appeal sent to [REDACTED] listing both service and employment issues and stating preference for external scrutiny by the Audit Commission.
- 7 March 2007: Letter from [REDACTED] to [REDACTED] asking him to deal with Martin Morton's letter of appeal.
- 12 March 2007: [REDACTED] sends formal response to grievance.
- 4 May 2007: Martin Morton returned to work at short notice and sent home until after Bank Holiday on 8 May 2007. Located in office on his own.
- 23 May 2007: Appeals Sub-committee hearing of appeal adjourned to enable DASS to respond fully to Martin Morton's complaints.
- 2 July 2007: Appeals Sub-Committee's reconvened hearing of Martin Morton's appeal.
- 3 July 2007: Appeal withdrawn after day 1 of the hearing.
- September 2007: Martin Morton returned to work from annual holiday. Located in open plan office.
- September 2007: [REDACTED], [REDACTED], on annual leave. Martin Morton complains of having no work to do.

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OUTLINE CHRONOLOGY OF EVENTS...cont'd

- 2 October 2007: Email to [REDACTED] enquiring where whistleblowing investigations are up to.
- 12 October 2007: Following access to his HR file, Martin Morton makes initial contact with Audit Commission to commence his PIDA disclosure.
- 22 October 2007: [REDACTED] confirms he thought Martin Morton had withdrawn his whistleblowing complaints when he withdrew his grievance on 3/7/07.
- 29 October 2007: Letter to [REDACTED] to confirm Martin Morton wants his whistleblowing investigation to proceed.
- 31 October [REDACTED] places note on Martin Morton's HR file.
- 12 November 2007: Meeting with [REDACTED] re access to HR file. [REDACTED] denies shredding documents.
- 16 November 2007: [REDACTED] confirms an investigation has already been carried out by [REDACTED]. Letter makes reference to gross misconduct and the Council's disciplinary policy.
- 20 November 2007: [REDACTED] confirms he did ask for documents to be shredded.
- 28 November 2007: "Problem Solving" meeting re further grievance about having no work to do. Promise of:
(i) Job description;
(ii) Discussion of working styles;
(iii) Follow up meeting; not met.
- 4 December 2007: [REDACTED] arranges emergency OHU referral.

OUTLINE CHRONOLOGY OF EVENTS...cont'd

- 11 December 2007: [REDACTED] declines request for mediation via ACAS and confirms the matter is closed. His position is final.
- 23 January 2008: Martin Morton commences period of sickness absence.
- 20 February 2008: (i) Formal grievance hearing about having no work to do.
- (ii) Discussions about Martin Morton leaving with a settlement figure in accordance with a Compromise Agreement.
- 7 April 2008: Compromise Agreement signed and Martin Morton's employment terminated.

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Wirral Council

Report of an investigation into the treatment of Martin Morton in
relation to his allegations of abuse of power/bullying

APPENDIX 2

OVERVIEW OF MARTIN MORTON'S ALLEGATIONS.

31 March 2011

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REPORT OF AN INVESTIGATION INTO THE TREATMENT OF MARTIN MORTON IN RELATION TO HIS ALLEGATIONS OF ABUSE OF POWER/BULLYING

OVERVIEW OF MARTIN MORTON'S ALLEGATIONS ---by Types of Behaviour

An overview of Martin Morton's claims/allegations of abuse of power/bullying can be found in the instances shown below. This list is neither exclusive nor exhaustive and there may be other forms of behaviour which also constitute bullying and harassment. At the same time, by their very nature, the examples of bullying behaviour listed here could be shown under different group headings e.g. an example of personal bullying behaviour can lead to a denial of due process; or the withholding of information from someone can result in a failure to give them support. Consequently, there can be overlaps/cross references of specific examples between the various group headings shown.

1 BULLYING - PERSONAL BEHAVIOUR

Personal behaviour involves 1 : 1 contact between the person alleged to be bullying and the recipient and relates to personal actions which can be non-verbal; verbal and/or written.

Persistently criticising unnecessarily

- 1(A) At a management meeting on 4 November 2004 when [REDACTED] said... "Martin what do you actually do?";
- 1(B) By [REDACTED] and [REDACTED] alleged unreasonable criticism of Martin Morton for referring in correspondence to an Elected Member of the Council by her first name;
- 1(C) By [REDACTED] alleged unreasonable criticism of Martin Morton for copying an e-mail to junior officers;

Making inappropriate personal comments

- 1(D) At a meeting on 4 November 2004 when [REDACTED] commented that Martin Morton was "just a dogsbody";
- 1(E) At a meeting on 17 January 2006, when allegedly being told by [REDACTED] to put his moral considerations to one side;
- 1(F) Allegedly being summarily dismissed from a meeting by [REDACTED] saying "Thank you Martin, NO I mean THANK YOU";
- 1(G) Allegedly being called by a former colleague [REDACTED] "little gofer boy";
- 1(H) Allegedly being told by [REDACTED] that he (Martin Morton) did not understand the bigger picture;

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- 1(I) By [REDACTED] [REDACTED] alleged comment to members of the Audit and Risk Management Committee on 25 November 2009, that [REDACTED] had said that "... *Martin Morton was a troublemaker and not a good witness*";

2 BULLYING - COLLECTIVE BEHAVIOUR

Collective behaviour involves two or more people, often departmental colleagues, who take part in joint or concerted action which undermines or otherwise adversely affects an individual.

Martin Morton has alleged there was a bullying culture in DASS which has led to some of the personal treatment he has received as shown below:-

Deliberate isolation by ignoring or excluding someone

Martin Morton's alleged isolation at work from May 2007 as evidenced by:-

- 2(A) [REDACTED] decision to send Martin Morton home on his return to work in May 2007;
- 2(B) DASS discussions / correspondence with Martin Morton in May/June 2007, when he alleges he was given an instruction by [REDACTED] not to attend Adult Protection strategy meetings resulting in his continuing professional exclusion and isolation;
- 2(C) By being excluded from SP Corporate Strategy and Learning Disabilities Board Meetings;
- 2(D) DASS' discussions/correspondence with Martin Morton between May – September 2007 re. DASS' alleged failure to allocate work to him, resulting in his further isolation and exclusion from the department. e.g. (i) being left in an office on his own with little or no work to do; and (ii) being left with little work to do while his [REDACTED] [REDACTED] was on holiday;
- 2(E) [REDACTED] decision not to intervene when requested to do so by Martin Morton in November 2007, in discussions between himself and [REDACTED], re: the shredding of documents relating to Martin Morton's file;

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Withholding information or removing areas of responsibility without justification

- 2(F) By the alleged deletion of Martin Morton's post of Supported Living Development Officer and the provision of a new job Task List in May 2007;
- 2(G) By being denied access to Supported Living Service files in May 2007;
- 2(H) [REDACTED] discussion/correspondence with Martin Morton between October – November 2007 re: the shredding of documents relating to his HR file;

Failure to support/Undermining someone

- 2(I) By DASS allegedly putting Martin Morton's compliance with the GSCC Code of Practice at risk;
- 2(J) By [REDACTED] alleged failure to give Martin Morton support when he:
 - (i) Reported unfair criticism of himself by a service provider, in April 2006, i.e. by advising him to contact his trade union;
 - (ii) Wished to challenge a Supported Living service provider re: their management of service users DLA payments in July 2006;
- 2(K) By DASS' handling of Martin Morton's concerns re: XXX (a service provider), as illustrated in [REDACTED] memo dated 18 April 2006 i.e. being advised not to become involved with XXX staff concerns;
- 2(L) The alleged breakdown in communications between DASS and Martin Morton which contributed to a deterioration in working relationships and a fundamental breach of trust and confidence, as evidenced by:
 - (i) No KIE discussions or supervision notes with his [REDACTED] [REDACTED];
 - (ii) A lack of contact with him during his 8 months sickness absence between September 2006 and May 2007;
 - (iii) No discussion with him of any Occupational Health Unit reports on his health throughout this time;
 - (iv) DASS' lack of support for Martin Morton when attending a Housing Benefit Tribunal hearing in October 2006;
 - (v) A lack of feedback on action being taken by DASS "behind the scenes" in relation to Supported Living Service providers;
 - (vi) No return to work interview with his [REDACTED] [REDACTED] in May 2007;

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- 2(M) The preparation and consideration of Management reports which Martin Morton alleges were written by [REDACTED] in May 2007, with the purpose of undermining his grievance case;
- 2(N) The offer to Martin Morton by Corporate HR of redeployment opportunities to posts of Care Assistant and Cleaner;
- 2(O) The preparation of [REDACTED] note for Martin Morton's file, dated 31 October 2007, in relation to his grievance/whistleblowing claims;
- 2(P) Alleged threats of disciplinary action in separate correspondence from [REDACTED] and [REDACTED] in November 2007;

3 ABUSE OF POWER – DENIAL OF DUE PROCESS (Departmental)

Bullying is a form of abuse of power. For the purposes of this investigation the term abuse of power is used here to describe the improper or inappropriate use of authority by someone who has that authority because they hold a particular office.

Martin Morton's claims are shown as allegations of the denial of due process in relation to his grievance and whistleblowing claims as evidenced by:

- 3(A) DASS' consideration/discussion and correspondence with Martin Morton re: his formal grievance/whistleblowing claims between August 2006 and February 2007 i.e.
 - (i) alleged long delay; excessive problem solving meetings;
 - (ii) being told that DASS has no statutory powers to intervene;
 - (iii) being told that the Director is not accountable to Martin Morton;
- 3(B) DASS' discussion/correspondence with Martin Morton re: his two grievance appeal hearings on 23rd May and 2nd July 2007 i.e.
 - (i) DASS' request for a postponement of hearing on 23/5/07;
 - (ii) No consideration of a Whistleblowing investigation;
- 3(C) The problem solving meeting with [REDACTED] and subsequent correspondence with Martin Morton, between November 2007 - January 2008, to discuss his formal grievance re. having no work to do i.e. DASS' alleged failure to deliver:- (i) a job description; (ii) a discussion of working styles between [REDACTED]/Martin Morton; and (iii) an agreed follow-up meeting; and

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- 3(D) Discussions with Martin Morton at the grievance hearing on 20 February 2008, attended by [REDACTED] and [REDACTED], and the circumstances which led to the signing of a Compromise Agreement with an alleged "gagging clause" prior to Martin Morton leaving the Council's employment in April 2008;

4 ABUSE OF POWER – DENIAL OF DUE PROCESS (Corporate)

Martin Morton's claims are shown as allegations of the denial of due process in relation to his grievance and whistleblowing claims as evidenced by:

- 4(A) The alleged conduct of the Appeals Sub-Committee's meeting to consider Martin Morton's grievance appeal hearing on 23 May 2007 i.e. that he was placed at a disadvantage both before and during the hearing;
- 4(B) The alleged conduct of the Appeals Sub-Committee's meeting to consider Martin Morton's grievance appeal hearing on 2 July 2007 which he perceived to be a day of prolonged bullying and intimidation as illustrated by:-
- (i) An alleged threat of him being sued for defamation;
 - (ii) An alleged virulent and unwarranted personal attack by [REDACTED];
 - (iii) No declaration of interest by Panel Members;
 - (iv) Advisers allegedly having a previous involvement in the case;
 - (v) Martin Morton's witnesses not being allowed to speak;
 - (vi) Martin Morton feeling traumatized by events at the hearing;
- 4(C) Following the appeal hearing, the subsequent refusal of Martin Morton's request for a Members' briefing meeting;
- 4(D) Correspondence/exchange of emails with Martin Morton between October 2007- December 2007 re. his whistleblowing allegations when he alleges he was bullied by [REDACTED]:
- (i) refusal of his request for an investigation;
 - (ii) refusal of his request for mediation via ACAS;
 - (iii) seeking an inappropriate referral to occupational health or him, without consultation.
- 4(E) WMBC correspondence with Martin Morton in respect of his requests, made under the terms of the Freedom of Information Act for information relating to the treatment of his allegations, and in particular e-mails of 13/8/2009 and 9/8/2010;

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5 OTHER CLAIMS

5(A) Nepotism

Martin Morton's claims re. "The Halton Mafia" and that [REDACTED] had to send a letter of apology about a recruitment decision to a member of staff;

5(B) Pay-off to a Whistleblower

An allegation that a member of staff was "paid-off" after whistleblowing over Supporting Living service issues;

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relation to his allegations of abuse of power/bullying

APPENDIX 3

LIST OF INTERVIEWEES

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REPORT OF AN INVESTIGATION INTO THE TREATMENT OF MARTIN
MORTON IN RELATION TO HIS ALLEGATIONS OF ABUSE OF
POWER/BULLYING

LIST OF INTERVIEWEES

The list of employees and former employees of the Council who have been interviewed during the course of the Investigation is as follows:

<u>Name</u>	<u>Post title</u>
[REDACTED]	[REDACTED] Head of [REDACTED]
[REDACTED]	[REDACTED] Supervisor, [REDACTED] [REDACTED] DASS
[REDACTED]	[REDACTED] Manager
[REDACTED]	[REDACTED] Committee Officer
[REDACTED]	[REDACTED] Committee Officer
[REDACTED]	Appeals Panel Member
[REDACTED]	Human Resources Officer, DASS
[REDACTED]	[REDACTED] Manager for Health, [REDACTED] [REDACTED]
[REDACTED]	Head of Branch, [REDACTED] DASS
[REDACTED]	[REDACTED] Manager, [REDACTED] DASS
[REDACTED]	Deputy [REDACTED]
[REDACTED]	[REDACTED] Social Worker ([REDACTED] [REDACTED]), DASS
[REDACTED]	[REDACTED] Solicitor, Department of Law, HR and Asset Management

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LIST OF INTERVIEWEES...cont'd

[REDACTED] Manager, DASS

[REDACTED] Area manager, [REDACTED],
DASS

[REDACTED] [REDACTED] Manager,
DASS

[REDACTED] Director [REDACTED]

[REDACTED] Martin Morton's [REDACTED]

[REDACTED] Former [REDACTED] Development Officer

[REDACTED] Committee Officer

[REDACTED] Head of Branch, [REDACTED]
[REDACTED] DASS

[REDACTED] Manager, DASS

[REDACTED] Manager, HR, DASS

[REDACTED] Appeals Panel Member

[REDACTED] Manager, DASS

[REDACTED] Martin Morton's friend

[REDACTED] Director [REDACTED]

[REDACTED] Support Officer, DASS

[REDACTED] Appeals Panel

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APPENDIX 4

JOB DESCRIPTION :

SUPPORTED LIVING DEVELOPMENT OFFICER

31 March 2011

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METROPOLITAN BOROUGH OF WIRRAL

REFERENCE NO:

Job Description M3

Department: Social Services		Division: Adults with Special Needs	
Designation of Post	Supported Living Development Officer	Grade PO6	Post Number.
Responsible to	Quality and Development Officer		
Immediate Subordinates			

Description of duties:

The values to which the Metropolitan Borough of Wirral is committed to are as follows:

- The purpose of the Council is to serve Wirral people
- Councillors and employees are accountable to Wirral people
- Wirral Council will act with honesty, integrity and respect for the individual in its dealings with the public and its employees
- The Council is a partnership between councillors and employees
- The Council's most important resource is its employees

In accordance with these values the postholder will be required to:

FUNCTION

1. To develop a joint strategy for Supported Living in Wirral in line with the Supported Living proposals (Kinsella 1999).
2. In partnership with Health, Social Services and the Housing Department access appropriate housing for people with disabilities.
3. To contribute to the implementation of the proposals outlined in Supporting People Funding Framework.

Job Description....cont'd

4. To monitor and evaluate the development of the Supporting People Service.
5. To develop and implement an effective system of monitoring, review and evaluation for Supported Living Services that is consistent with a person centred approach and fulfils the Councils statutory requirements.
6. To develop and implement a training and development programme for Care Managers which includes Person Centred Planning, Service design and the use of the above monitoring and review system.
7. To develop and implement a commissioning framework which ensures that:
 - Person centred plans inform service specifications
 - The outcome of monitoring and review informs service specifications
 - Care managers and Contract Compliance Officers have the skills and knowledge for their respective roles
8. To establish a framework of service development and market management which ensures that there is a diverse pool of competent providers with a focus on continuous quality improvement and best value.
9. To carry out such duties as may be required by the Director of Social Services or such other Officers as may be authorised by the Director.

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APPENDIX 5

TASK LIST :

SUPPORTED LIVING DEVELOPMENT OFFICER

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Supported Living Development Officer

Task List

May 2007

The role of the Development Officer for Supported Living is central to the accommodation component of each Commissioning Strategy. There are a number of developments at present.

Learning Disability

The move from Fellowship House to Lighthouse Road, and the subsequent development of Fellowship House.

[REDACTED] and [REDACTED] have more detail on this and one of the first tasks will be to find out about the progress and put a project plan together if one has not already been completed.

Out of area Placements

There are a significant number of people who are living out of area and who will need to return. This is also the case in mental health. However, there are few resources locally to meet their needs.

[REDACTED] and [REDACTED] will have more detail, and it is advisable to meet with them both as soon as possible in order to clarify the level and type of accommodation which will be needed.

Mental Health

St Andrew's Road is vacant and negotiations are underway for its sale to a local housing developer who specialises in supported accommodation for people with disabilities. There is still much work to be done. However, this is potentially a very exciting development.

[REDACTED] and [REDACTED] have been making progress on this work and, again, finding out about this and putting a project plan together will be advisable. At this stage, it is hoped that this scheme would be suitable for people who are currently out of area.

Shrewsbury Road also vacant owned by [REDACTED]. The Department needs to determine whether this will be needed in the future and in what condition. Currently bed-sit accommodation with shared bathrooms.

Task List...cont'd

Older People

A number of extra care sheltered housing developments underway.
[REDACTED] has more detail on these.

The Division

Commissioning Health and Wellbeing is a new departure for the department, bringing together all of the joint commissioning functions, and developing the wellbeing agenda. A number of functions have been brought together, with the aim of ensuring that the promotion of independence and maintenance of health is uppermost in future developments for all people who use services, and their carers. Working within the Division gives an opportunity to help shape the future agenda for the department.

The development of Supported Living will not include involvement with service users on an individual basis.

Any issues about the quality of providers will be dealt with via the contracts section and care management.

Other developments will emerge, which will need to be negotiated. This is due to several factors, uppermost of which is that the division is still in formation and not all post-holders have been appointed.

There are several other officers in a similar position at the moment. However, it is clear from the information above that there is an urgent need for the Supported Living Development Officer role.

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APPENDIX 6

SUMMARY OF ALLEGATIONS AND CONCLUSIONS

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REPORT OF AN INVESTIGATION INTO THE TREATMENT OF MARTIN
MORTON IN RELATION TO HIS ALLEGATIONS OF ABUSE OF
POWER/BULLYING

SUMMARY OF ALLEGATIONS AND CONCLUSIONS

1. Bullying – Personal Behaviour

Bullying - Personal behaviour involves 1:1 contact between the person alleged to be bullying and the recipient and relates to personal actions which can be non-verbal, verbal and/or written. Martin Morton alleges he was bullied as follows:-

Persistently criticising unnecessarily

Allegation 1(A)

At a management meeting on 4 November 2004 when [REDACTED] said "...Martin, what do you actually do?"

Conclusion: Allegation 1(A)

Based on my findings and the balance of probabilities, I have concluded that Martin Morton was bullied as he has claimed.

Allegation 1(B)

By [REDACTED] and [REDACTED] alleged unreasonable criticism of Martin Morton for referring in correspondence to an Elected Member of the Council by her first name;

Conclusion: Allegation 1(B)

Based on my findings it is clear that a reminder about a Departmental protocol sent via e-mail is part of the established culture in DASS and consequently, while it is rather formal, I do not believe that to do so in this case is an example of bullying behaviour.

Allegation 1(C)

By [REDACTED] alleged unreasonable criticism of Martin Morton for copying an e-mail to junior officers;

Conclusion: Allegation 1(C)

Based on my findings, while this exchange contributed further to the deteriorating working relationships between Martin Morton and his senior managers, in these particular circumstances I do not believe that [REDACTED] reminder to Martin Morton not to send his e-mail to other officers was unreasonable criticism of him.

Making inappropriate personal comments

Allegation 1(D)

At a meeting on 4 November 2004 when [REDACTED] commented that he (Martin Morton) was "*just a dogsbody*";

Conclusion: Allegation 1(D)

I have concluded that Martin Morton was bullied by [REDACTED] as he claims.

Allegation 1(E)

At a meeting on 17 January 2006, when allegedly being told by [REDACTED] to put his moral considerations to one side;

Conclusion: Allegation 1(E)

I have concluded that while [REDACTED] request to Martin Morton to "*put his moral considerations to one side*" may not be evidence of personal bullying behaviour, the Department's failure to consider the formal channel of the Whistleblowing Policy for Martin Morton's service complaints was inappropriate behaviour which contributed to a denial of due process in Martin Morton's case.

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Allegation 1(F)

Allegedly being summarily dismissed from a meeting by [REDACTED] saying "Thank you Martin, NO I mean THANK YOU";

Conclusion: Allegation 1(F)

Based on my findings I have been unable to reach a conclusion concerning this allegation.

Allegation 1(G)

Allegedly being called by a former colleague "[REDACTED] little gofer boy";

Conclusion: Allegation 1(G)

Based on my findings I have been unable to reach a conclusion concerning this allegation.

Allegation 1(H)

Allegedly being told by [REDACTED] that he (Martin Morton) did not understand the bigger picture;

Conclusion: Allegation 1(H)

Based on my findings I have concluded that Martin Morton was not bullied by being told that he did not understand the bigger picture;

Allegation 1(I)

By [REDACTED] alleged comment to members of the Audit and Risk Management Committee on 25 November 2009 that [REDACTED] had said that "... *Martin Morton was a troublemaker and not a good witness*";

Conclusion: Allegation 1(I)

I have concluded that Martin Morton's allegation has not been proved.

2 Bullying – Collective behaviour

Bullying – Collective behaviour involves two or more people, often departmental colleagues, who take part in joint or concerted action which undermines or otherwise adversely affects an individual.

Martin Morton has alleged there was a bullying culture in DASS which has led to some of the personal treatment he has received as shown below:-

Deliberate isolation by ignoring or excluding someone

Martin Morton's alleged isolation at work from May 2007 as evidenced by:-

Allegation 2(A)

██████████ decision to send him home on his return to work in May 2007;

Conclusion: Allegation 2(A)

Based on my findings, while this exchange contributed further to the deteriorating working relationships between Martin Morton and his senior managers, in these particular circumstances, I do not believe that Martin Morton was bullied as he has claimed.

Allegation 2(B)

DASS discussions / correspondence with Martin Morton in May/June 2007, when he alleges he was given an instruction by ██████████ not to attend Adult Protection strategy meetings resulting in his continuing professional exclusion and isolation;

Conclusion: Allegation 2(B)

Based on my findings I have concluded that ██████████ decision that Martin Morton should not attend Adult Protection strategy meetings was inappropriate behaviour which resulted in Martin Morton's continuing professional exclusion and isolation;

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Allegation 2(C)

By being excluded from SP Corporate Strategy and Learning Disabilities Board Meetings;

Conclusion: Allegation 2(C)

I have concluded that Martin Morton was not bullied by being excluded from SP Core Strategy and Learning Disabilities Board Meetings as he has claimed;

Allegation 2(D)

DASS' discussions/correspondence with Martin Morton between May – September 2007 re. DASS' alleged failure to allocate work to him, resulting in his further isolation and exclusion from the department e.g. (i) being left in an office on his own with little or no-work to do; and (ii) being left with little work to do while his [REDACTED] was on holiday;

Conclusion: Allegation 2(D)

I have concluded that while DASS did not fail to allocate work to Martin Morton, the work it did provide and the way in which the changes were introduced and managed had a detrimental effect on him resulting in his further isolation and exclusion from the department. However, I do not believe that this was due to an intention to victimise him.

Allegation 2(E)

[REDACTED] decision not to intervene when requested to do so by Martin Morton in November 2007, in discussions between himself and [REDACTED], re: the shredding of documents relating to Martin Morton's file;

Conclusion: Allegation 2(E)

I have concluded that Martin Morton was not bullied as he has claimed.

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Withholding information or removing areas of responsibility without justification

Allegation 2(F)

By the alleged deletion of Martin Morton's post of Supported Living Development Officer and the provision of a new job Task List in May 2007;

Conclusion: Allegation 2(F)

I have concluded that Martin Morton was not bullied by the deletion of his post and the provision of a new job Task List as he has claimed.

Allegation 2(G)

By being denied access to Supported Living Service files in May 2007;

Conclusion: Allegation 2(G)

I have concluded that Martin Morton was bullied by being denied access to Supported Living Service files in May 2007;

Allegation 2(H)

[REDACTED] discussion/correspondence with Martin Morton between October – November 2007 re: the shredding of documents relating to his HR file;

Conclusion: Allegation 2(H)

I have concluded that while I do not believe that the shredding of the documents in itself is an example of bullying behaviour, [REDACTED] behaviour was inappropriate in the manner in which he handled this issue and this further damaged Martin Morton's trust and confidence in his senior managers.

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Failure to support/Undermining someone

Allegation 2(I)

By DASS allegedly putting Martin Morton's compliance with the GSCC Code of Practice at risk;

Conclusion: Allegation 2(I)

I have concluded that while it is understandable that Martin Morton should feel vulnerable in terms of his professional standing against the requirements of the GSCC code of practice, I believe his actions in reporting his service concerns meant that he met the requirements of the code and was not at risk.

Allegation 2(J)

By [REDACTED] alleged failure to give Martin Morton support when he:

- (i) Reported unfair criticism of himself by a service provider, in April 2006, i.e. by advising him to contact his trade union;
- (ii) Wished to challenge a Supported Living service provider re: their management of service users DLA payments in July 2006;

Conclusion: Allegation 2(J)

I have concluded that:

Unfair criticism

- (i) [REDACTED] suggestion, in these circumstances, that Martin Morton should contact his trade union was a failure to give him support as he has claimed; and

Challenge to a Supported Living Service Provider

- (ii) That [REDACTED] decision to request Martin Morton to omit any reference to DLA issues from his letter to the particular Supported Living service provider was appropriate and not a failure to give him support as he has claimed;

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Allegation 2(K)

By DASS' handling of Martin Morton's concerns re: XXX (a service provider), as illustrated in [REDACTED] memo dated 18 April 2006 i.e. being advised not to become involved with XXX's staff concerns;

Conclusion: Allegation 2(K)

I have concluded that Martin Morton was not bullied by being advised not to become involved with XXX's staff concerns;

Allegation 2(L)

The alleged breakdown in communications between DASS and Martin Morton which contributed to a deterioration in working relationships and a fundamental breach of trust and confidence, as evidenced by:

- (i) No KIE discussions or supervision notes with his [REDACTED];
- (ii) A lack of contact with him during his 8 months sickness absence between September 2006 and May 2007;
- (iii) No discussion with him of any Occupational Health Unit reports on his health throughout this time;
- (iv) DASS' lack of support for Martin Morton when attending a Housing Benefit Tribunal hearing in October 2006;
- (v) A lack of feedback on action being taken by DASS "behind the scenes" in relation to Supported Living Service providers;
- (vi) No return to work interview with his [REDACTED] in May 2007;

Conclusion: Allegation 2(L)

I have concluded that there was a breakdown in communications between DASS and Martin Morton which contributed to a deterioration in working relationships and to a fundamental breach of trust and confidence between himself and his employer.

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Allegation 2 (M)

The preparation and consideration of Management reports which Martin Morton alleges were written by [REDACTED] in May 2007, with the purpose of undermining his grievance case;

Conclusion: Allegation 2(M)

I have concluded that Martin Morton was not bullied by the preparation and consideration of these Management reports as he has claimed.

Allegation 2(N)

The offer to Martin Morton by Corporate HR of redeployment opportunities to posts of Care Assistant and Cleaner;

Conclusion: Allegation 2(N)

I have concluded that Martin Morton has not been bullied by being sent copies of the HR Bulletin which included details of redeployment opportunities.

Allegation 2(O)

The preparation of [REDACTED] note for Martin Morton's file, dated 31 October 2007, in relation to his grievance/whistleblowing claims;

Conclusion: Allegation 2(O)

I have concluded that Martin Morton was not disadvantaged by the preparation of [REDACTED] note for Martin Morton's HR file, dated 31 October 2007.

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Allegation 2(P)

Alleged threats of disciplinary action in separate correspondence from [REDACTED] and [REDACTED] in November 2007;

Conclusion: Allegation 2(P)

I have concluded that:

- (i) [REDACTED] reference to gross misconduct and the Council's disciplinary policy in his letter to Martin Morton of 16 November 2007 was threatening and is an example of inappropriate behaviour which undermined him; and
- (ii) While [REDACTED] reference to disciplinary action in his letter to Martin Morton of 8 November 2007 was "heavy handed" I do not think it was an example of bullying behaviour.

3 Abuse of Power – Denial of due process (Departmental)

Bullying is a form of abuse of power. For the purposes of this investigation abuse of power is used here to describe the improper or inappropriate use of authority by someone who has that authority because they hold a particular office.

Martin Morton's claims are shown as allegations of the denial of due process in relation to his grievance and whistleblowing claims as evidenced by:

Allegation 3(A)

DASS' consideration/discussion and correspondence with Martin Morton re: his formal grievance/whistleblowing claims between August 2006 and February 2007 i.e.

- (i) alleged long delay; excessive problem solving meetings;
- (ii) being told that DASS has no statutory powers to intervene;
- (iii) being told that the Director is not accountable to Martin Morton;

Conclusion: Allegation 3(A)

I have concluded that Martin Morton was denied due process by DASS' consideration of his formal grievance/whistleblowing complaints as he has claimed.

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Allegation 3(B)

DASS' discussion/correspondence with him re: his two grievance appeal hearings on 23 May and 2 July 2007 i.e.

- (i) DASS' request for a postponement of hearing on 23/5/07;
- (ii) No consideration of a Whistleblowing investigation;

Conclusion: Allegation 3(B)

I have concluded that:-

- (i) I do not believe that DASS' request for a postponement of the grievance appeal hearing on 23 May 2007 is an example of bullying behaviour which has denied Martin Morton due process in the consideration of his grievance; and
- (ii) DASS lack of consideration of Martin Morton's request for a Whistleblowing investigation is, I believe, an example of bullying behaviour which has denied him due process in the consideration of his grievance.

Allegation 3(C)

The problem solving meeting with [REDACTED] and subsequent correspondence with Martin Morton, between November 2007 - January 2008, to discuss his formal grievance re. having no work to do i.e. DASS' alleged failure to deliver:-

- (i) a job description;
- (ii) a discussion of working styles between [REDACTED]/Martin Morton; and
- (iii) an agreed follow-up meeting;

Conclusion: Allegation 3(C)

I have concluded that DASS' failure to deliver (i) a job description; (ii) a discussion of working styles between [REDACTED]/Martin Morton; and (iii) an agreed follow-up meeting to discuss his formal grievance re. having no work to do is a denial of due process in relation to the consideration of Martin Morton's grievance and whistleblowing claims.

Allegation 3(D)

Discussions with Martin Morton at the grievance hearing on 20 February 2008, attended by [REDACTED] and [REDACTED] and the circumstances which led to the signing of a Compromise Agreement with an alleged "gagging clause" prior to his leaving the Council's employment in April 2008;

Conclusion: Allegation 3(D)

I have concluded that being asked to sign the Compromise Agreement was not an example of bullying behaviour which denied Martin Morton due process in the consideration of his grievance and whistleblowing allegations.

4 Abuse of Power – Denial of due process (Corporate)

Martin Morton's claims are shown as allegations of the denial of due process in relation to his grievance and whistleblowing claims as evidenced by:

Allegation 4(A)

The alleged conduct of the Appeals Sub-Committee's meeting to consider Martin Morton's grievance appeal hearing on 23 May 2007 i.e. that he was placed at a disadvantage both before and during the hearing;

Conclusion: Allegation 4(A)

5.491 I have concluded that Martin Morton was not disadvantaged by the conduct of the grievance appeal hearing on 23 May 2007 and therefore this did not lead to a denial of due process in the consideration of his grievance and whistleblowing claims.

Allegation 4(B)

The alleged conduct of the Appeals Sub-Committee's meeting to consider Martin Morton's grievance appeal hearing on 2 July 2007 which he perceived to be a day of prolonged bullying and intimidation as illustrated by:-

- (i) An alleged threat of him being sued for defamation;
- (ii) An alleged virulent and unwarranted personal attack by [REDACTED];
- (iii) No declaration of interest by Panel Members;
- (iv) Advisers allegedly having a previous involvement in the case;
- (v) Martin Morton's witnesses not being allowed to speak;

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(vi) Martin Morton feeling traumatised by events at the hearing;

Conclusion: Allegation 4(B)

I have concluded that although Martin Morton was not bullied by the conduct of events on the day of the grievance appeal hearing the lack of separation of service and grievance issues led to a denial of due process in the consideration of his case.

Allegation 4(C)

Following the appeal hearing, the subsequent refusal of Martin Morton's request for a Members' briefing meeting;

Conclusion: Allegation 4(C)

5.646 I have concluded that [REDACTED] refusal of Martin Morton's request for a Member's briefing meeting was not bullying behaviour and therefore did not lead to a denial of due process in the consideration of his of his grievance and whistleblowing allegations.

Allegation 4(D)

Correspondence/exchange of emails with him between October 2007- December 2007 re. his whistleblowing allegations when he alleges he was bullied by [REDACTED]:

- (i) refusal of his request for an investigation;
- (ii) refusal of his request for mediation via ACAS;
- (iii) seeking an inappropriate referral to occupational health for him, without consultation.

Conclusion: Allegation 4(D)

I have concluded that:-

- (i) Martin Morton was denied due process in the consideration of his grievance and whistleblowing allegations by the decision not to agree his request for an investigation;
 - (ii) [REDACTED] refusal of his request for mediation via ACAS was not inappropriate;
 - (iii) [REDACTED] seeking a referral to Occupational Health for him without consultation was inappropriate.
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Allegation 4(E)

WMBC correspondence with Martin Morton in respect of his requests made under the terms of the Freedom of Information Act for information relating to the treatment of his allegations and in particular e-mails of 13/8/2009 and 9/8/2010;

Conclusion: Allegation 4(E)

5.683 I have concluded that the Council's handling of Martin Morton's requests made under the terms of the Freedom of Information Act for information relating to the treatment of his allegations is not an example of bullying behaviour or an abuse of power.

Allegation 5(A) Nepotism

Martin Morton's claims re. "The Halton Mafia" and that [REDACTED] had to send a letter of apology about a recruitment decision to a member of staff;

Conclusion: Allegation 5(A)

I have concluded that in the case of both alleged examples of nepotism/favouritism by Officers, the allegations were examined at the time they were made and resolved by Elected Members and, consequently, there is no need to examine them further.

Allegation 5(B) Pay-off to a Whistleblower

An allegation that a member of staff was "paid-off" after whistleblowing over Supporting Living service issues;

Conclusion: Allegation 5(B)

I have concluded that the termination of the employment contract of the employee concerned did not involve the payment of any additional amount which could be regarded as a "pay off" payment.
