



Audit and Risk Management Committee

Date:	Tuesday, 3 November 2009
Time:	6.15 pm
Venue:	Committee Room 1 - Wallasey Town Hall

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AGENDA

1. DECLARATIONS OF INTEREST

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

2. MINUTES (Pages 1 - 6)

To receive the minutes of the special meeting of the Committee held on 23 September 2009.

3. ADULT SOCIAL SERVICES - CHARGING POLICY - SERVICE USERS RESIDING AT "IN HOUSE" SUPPORTED LIVING UNITS DURING THE PERIOD 1997 TO 2003 (Pages 7 - 32)

4. PROGRESS REPORT ON ACTION PLAN IN RELATION TO PUBLIC INTEREST DISCLOSURE ACT 1998 (PIDA) (Pages 33 - 48)

5. CHARGING ARRANGEMENTS FOR SUPPORTED LIVING IN WIRRAL 1997 TO 2003 (Pages 49 - 54)

6. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR

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AUDIT AND RISK MANAGEMENT COMMITTEE

Wednesday, 23 September 2009

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

22 DECLARATIONS OF INTEREST

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

No such declarations were made.

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

Further to minute 20 (29 June 2009) and specifically to minute 20 (30 September 2008), the Director of Law, HR and Asset Management presented the report of the Chief Internal Auditor in relation to an investigation of matters raised by a whistleblower with the Audit Commission under the Public Interest Disclosure Act 1998 ('PIDA'). He reported that with his agreement, the whistleblower could now be named and would be referred to as Mr M Morton. He indicated that the investigation undertaken by internal audit focused upon whether a charging policy had been in place dating back to 1997 and, if so, whether or not it had been approved by members.

He outlined the issues that led to the investigation, which focused on former residents of Esher House Residential Care Home who had been transferred on its closure in 1997 to three Housing Association owned Supported Living Units in Bermuda Road, Curlew Way and Edgehill Road in Moreton. The provision of care and support clearly had a cost implication for the Council and prior to the closure of Esher House, its residents were charged by the Council in line with the Department of Health's Guidance '*Charging for Residential Accommodation Guidelines*' ('CRAG'). However, between 1997 and 2006, those residents were still charged for the care and support provided by Wirral Council staff, in line with a new charging policy developed by Wirral Council. It was that charging policy that Mr Morton had described as a 'Special Charging Policy' and which had also been referred to as a 'Modified CRAG'.

The Director commented that before Mr Morton brought the matters to the attention of the Audit Commission, they were raised within the Council under the Authority's Grievance Procedure. The concerns raised in the grievance were that –

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

With the agreement of the Chair, Mr Morton addressed the Committee. He expressed concern in relation to some of the findings of the audit, in particular that the policy approved in 1997 was reasonable and thus lawful. Mr Morton pointed out that it had been implemented without consultation.

The Director set out the key findings of the internal audit, which were based on the review of a large number of documents obtained from numerous sources. Individuals, including Mr Morton, had, on a number of occasions, been asked whether they had or were aware of any other documents which would have been pertinent to the review. No additional documents had been provided to Internal Audit and officers were grateful for the support of all individuals and for the information they had provided during the review.

The conclusions of the audit were that –

- Between October 1997 and February 2006 a 'Special Charging Policy' also referred to as 'Modified CRAG' was implemented by the Council in relation to the provision of care and support by Social Services/DASS staff at the 'in house' Supported Living Units at Bermuda Road, Curlew Way and Edgehill Road, Moreton and that those charges were consistent with the principles for charging at 'in house' Supported Living Units approved by the Council's Social Services Committee on 3 September 1997 (minute 31 refers).
- The principles for charging at 'in house' Supported Living Units approved by the Council's Social Services Committee on 3 September 1997 were intended to be applied by officers in relation to all 'in house' Supported Living Units in Wirral.
- On balance, between October 1997 and April 2003, the charges levied under the Modified CRAG were reasonable and lawful and should not be subject to any reimbursement.
- On balance, between April 2003 and February 2006, the charges levied under the Modified CRAG, in so far as the sums actually paid by an individual service user exceeded what they might reasonably have been required to pay had the Council implemented Fairer Charging in April 2003, such charges, totalling

£116,300, were excessive and should be subject to consideration of reimbursement.

- If reimbursement was to be considered, officers should seek to reach agreement with individual service users (and their family and/or advisers) as to the most appropriate, lawful solution, having due regard to the best interest of the service user in question.
- The delay in implementing Fairer Charging at the other 'in house' Supported Living Units across Wirral (apart from those at Bermuda Road, Curlew Way and Edgehill Road) between April 2003 and February 2006 meant the Council failed to attempt to collect £156,400 of income to which it was legally entitled, but cannot now legally seek to recover.
- The failure to assess service users at other 'in house' Supported Living Units across Wirral (apart from those at Bermuda Road, Curlew Way and Edgehill Road) prior to April 2003 meant that the Council failed to attempt to collect around £300,000 of income to which it was legally entitled, but cannot now legally seek to recover
- Officers did not recognise that elements of the Whistleblower's Grievance should more appropriately have been dealt with under the Council's Whistleblowing Policy. Irrespective of the label applied to the Whistleblower's Grievance, the concerns in relation to 'in house' Supported Living and Fairer Charging were serious and legitimate and should have been promptly resolved. Consequently, all Council managers should be reminded of the clear guidance contained within the Authority's Grievance Policy as to the difference between a Grievance (or private complaint) and a Whistleblow (which concerns danger or illegality that has a public interest or service user/customer aspect).
- The only point of substance raised by the Whistleblower in relation to Fairer Charging and Supported Living and not validated by Internal Audit is the matter of Members' approval of the principle of the 'Special Charging Policy' at the Social Services Committee on 3 September 1997. However, until earlier this month other current DASS officers also appeared to have been unaware of that decision.

In response to questions from a member in relation to charges to residents made by other local authorities between 1997 and 2003, the Director indicated that brief enquiries had been made with four other local authorities whose charges at that time ranged from zero to £30 per week. However, the charging policy agreed by the Social Services Committee in 1997 ensured that no-one was left with less than £70.10 per week, compared with £14.10 whilst at Esher House and assessed under CRAG. He therefore expressed the view that the policy agreed could be considered as having been reasonable, at that time. However, he accepted that other people could reach different conclusions.

In response to a further comment that auditors had ignored much of a chronology provided by Mr Morton, a Group Auditor indicated that the investigation had looked at all of the information provided and had used whatever was considered relevant to the scope of the inquiry.

The Leader of the Conservative Group addressed the Committee and expressed the view that an external investigation should be undertaken to consider all of the issues raised by Mr Morton. Other members commented that the matter should be referred for investigation to Merseyside Police.

In response to a question from the Leader of the Liberal Democrat Group in relation to those issues outside the remit of the audit, the Director of Adult Social Services confirmed that these had been addressed and had been included in an action plan, which would be presented to the next meeting of the Committee.

With regard to Balls Road Supported Living establishment, the Director of Adult Social Services indicated that comments made in November 2008 in relation to Daily Living Costs had been made in error. The audit accepted that the comment had been made in error and indicated that there were no concerns related to Balls Road raised by Mr Morton either in his grievance or in the PIDA disclosure to the Audit Commission.

It was moved by Councillor Southwood and seconded by Councillor Reisdorf –

“That the Director of Adult Social Services be instructed to seek any necessary Cabinet and/or Council approval to:

- (a) Implement the principle of reimbursement of service users at Bermuda Road, Curlew Way and Edgehill Road Moreton, between April 2003 and February 2006 in so far as the sums actually paid by an individual service user exceeded what they might reasonably have been required to pay had the Council implemented Fairer Charging in April 2003 by making any appropriate reimbursements and/or;
- (b) Take any other appropriate restorative action.”

The motion was agreed without a vote.

It was further moved by Councillor Mountney and seconded by Councillor Fraser –

“That the Director of Adult Social Services be instructed to seek any necessary Cabinet and/or Council approval to:

- (a) Implement the principle of reimbursement of service users at Bermuda Road, Curlew Way and Edgehill Road Moreton, between 1997 and 2003 in so far as the sums actually paid by an individual service user exceeded what they might reasonably have been required to pay had the principles contained in Fairer Charging been applied throughout that period and/or;
- (b) Take any other appropriate restorative action.”

It was moved as an amendment by Councillor Reisdorf and seconded by Councillor Southwood –

“(1) That a further investigation be undertaken by Internal Audit, to consider whether there was a point in time between 1997 and 2003 that officers ought reasonably have recognised that the ‘Special Charging Policy’ was unreasonable and therefore unlawful and, if so, to calculate the amount of re-imbusement that would be due

(2) That Internal Audit be requested to seek the views of Mr Morton in relation to the further investigation”

The amendment was put and carried (4:0)

Resolved –

- (1) That the Director of Adult Social Services be instructed to seek any necessary Cabinet and/or Council approval to:**
 - (i) Implement the principle of reimbursement of service users at Bermuda Road, Curlew Way and Edgehill Road Moreton, between April 2003 and February 2006 in so far as the sums actually paid by an individual service user exceeded what they might reasonably have been required to pay had the Council implemented Fairer Charging in April 2003 by making any appropriate reimbursements and/or**
 - (ii) Take any other appropriate restorative action.**
- (2) That a further investigation be undertaken by Internal Audit, to consider whether there was a point in time between 1997 and 2003 that officers ought reasonably have recognised that the ‘Special Charging Policy’ was unreasonable and therefore unlawful and, if so, to calculate the amount of re-imburement that would be due; and that Internal Audit be requested to seek the views of Mr Morton in relation to the further investigation.**
- (3) That consideration of the findings and conclusions set out in sections 5 and 6 of the report now submitted be deferred, pending the outcome of the further internal audit investigation.**
- (4) That the Director of Adult Social Services be instructed to make initial contact with those persons affected by the ‘Special Charging Policy’ in order to identify the most appropriate course of action in relation to re-imburement and/or appropriate restorative action; and to investigate the use of the Wirral Advocacy Service.**
- (5) That the results of the further investigation be presented to a special meeting of the Committee in October/November 2009, together with a report and action plan from the Director of Adult Social Services upon those wider issues raised by the Audit Commission PIDA report or internal audit reports.**
- (6) That the Director of Adult Social Services be instructed to present a further report to the January 2010 meeting of the Committee to update members on his progress in making appropriate re-imburement and/or taking other appropriate restorative action.**
- (7) That, by 31 October 2009, the Director of Law, HR and Asset Management write to all Council Principal Officers to remind them of the clear guidance contained within the Authority’s Grievance Policy as to the difference between a Grievance (or private complaint) and a Whistleblow (which concerns danger or illegality that has a public interest or service user/customer aspect).**
- (8) That the appreciation of the Committee be accorded to Mr Morton for bringing these matters to the attention of the Council and the Chief**

Executive be requested to write to Mr Morton to apologise to him on behalf of the Council.

WIRRAL COUNCIL

AUDIT AND RISK MANAGEMENT COMMITTEE

3 NOVEMBER 2009

REPORT OF THE CHIEF INTERNAL AUDITOR

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

1. EXECUTIVE SUMMARY

- 1.1. Further to Resolution 2 of the Audit and Risk Management Committee of the 23 September 2009 this report addresses the Special Charging Policy applied to service users residing at "in house" Supported Living Units.
- 1.2. Information has been reviewed from a number of sources, i.e. Audit Commission's PIDA Report, Mr Morton's grievance and documents within the Department of Adult Social Services.
- 1.3. Documentary evidence indicates the charges levied were approved by Members at the Social Services Committee, 3 September 1997. This is in accordance with the definition of "reasonableness" as stated in an Audit Commission Report - "Charging with Care" - May 2000.
- 1.4. It is difficult to judge if Wirral's charges for Supported Living were significantly higher than those of several other authorities in the period 1997 to 2003. Wirral's charges were dependent on a financial assessment based on the service users income whereas other local authorities were based on the level of care.
- 1.5. The Report submitted to the Special Social Services Committee, 26 July 2000, paragraph 4.24 indicates that it was intended to consider Supported Living Charges separately as part of the Charging Policy Review in 2000. No evidence was found that this was done.
- 1.6. Evidence is available that officers were aware in November 2000 and April 2001 that the charges levied for service users residing at "in house" Supported Living Units were higher than they would have been if the provisions of the Special Social Services Committee, 26 July 2000 - Charging Policy Review - had been applied.

2. BACKGROUND

- 2.1. Members of this Committee on 23 September 2009 (Resolution 2) requested:

"That a further investigation be undertaken by Internal Audit, to consider whether there was a point in time between 1997 and 2003

that officers ought reasonably have recognised that the 'Special Charging Policy' was unreasonable and therefore unlawful and, if so, to calculate the amount of re-imburement that would be due; and that Internal Audit be requested to seek the views of Mr Morton in relation to the further investigation".

3. INTERNAL AUDIT WORK UNDERTAKEN

- 3.1. In order to assess if the Special Charging Policy was "unreasonable" enquiries were made to the Directors of all northern Adult Social Services with a copy to the Chief Internal Auditors of the same Authorities concerning the charges levied by them between 1997 and 2003 for "in house" supported living service users. The format and content of the Questionnaire and letter were agreed with the Director of Adult Social Services and the Audit Commission. Over 50 authorities were consulted, all were given reminders and 11 replies were received from the north west Authorities. (Appendix 1 and 2).
- 3.2. Relevant documents from the Department of Adult Social Services (DASS), e-mails and Committee Reports were reviewed to ascertain if there was evidence that officers had information that could have indicated the charges were unreasonable. Further discussions and enquiries were made with DASS officers and managers. All were again open, cooperative and helpful but inevitably there were difficulties in remembering details and locating documents relating to several years ago.
- 3.3. Internal Audit again reviewed documents and papers relating to Mr Morton's grievance to ensure that all items relevant to the charging policy had been included within this review.
- 3.4. The Audit Commission has been made aware of the documents reviewed by Internal Audit and is not aware of any additional documents relevant to this investigation.
- 3.5. The Director of Law, HR and Asset Management wrote to Mr Morton to request his views and assistance in the investigation. Contact has been made with Mr Morton's solicitor. For various reasons it is unlikely that a response will be received before 30 October 2009.

4. FINDINGS

4.1. Chronology of Events

- 4.1.1 On 3 September 1997, a report was submitted to the Social Services Committee on "Future Services for People with Learning Difficulties". The Conclusion of the report was:

"If residents could be asked to contribute their benefits related to their dependency and level of need for care to the costs of care provision, this would leave each person with an income for daily living needs and with all their housing needs provided for while Social Services would

provide or purchase a full package of support care for them according to their individual needs”.

The Recommendation, which was agreed, was:

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

(See Appendix 2a and 2b of Special Audit and Risk Management Committee, 23 September 2009 which refers to the Social Services Committee 3 September 1997).

This was implemented for service users at Bermuda Road, Curlew Way and Edgehill Road between 1997 and 2003.

- 4.1.2. At the Special Social Services Committee on 26 July 2000, a report entitled “Charging Policy Review” was presented. The purpose of the Report was to inform Members of the outcome of the consultation exercise on proposed changes to the charging policy for non-residential services and to present recommendations.

Paragraph 4.24 of the report stated:

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

No evidence has been discovered that a further report was produced and submitted.

Please refer to my Report to this Committee on the 23 September 2009 paragraphs 5.2.13 to 5.2.15 which discusses this in detail.

- 4.1.3. It is clear from an e-mail and other correspondence that officers were aware that a further Committee Report was needed and Mr Morton brought these issues to the attention of officers within the Department. (Appendix 3 and 4).

4.2. Charges

- 4.2.1. An analysis of the charges levied on all the service users who lived at Bermuda Road, Curlew Way and Edgehill Road from 1997 to 2003 was completed. The charge levied depended upon the service users' benefits in accordance with the policy approved by Social Services Committee on 3 September 1997.

- 4.2.2. The records reviewed indicate that the average financial assessment charge for the period was £77.70 and the range is from an average of £63.33 in 1997/1998 to £83.82 in 2002/2003. This left an average

amount over the period for the service users own use of £97.42, ranging from £89.02 in 1997/1998 to £107.77 in 2002/2003, which is contrary to the suggestion that all supported living service users income was taken as a contribution to the costs of care and that charges were in excess of £100 per week. Records indicate the average ratio of charge to service user's income over the 5 years is approximately 44%. (Appendix 5).

4.2.3. A review of service users resident in the premises in Balls Road, Birkenhead was also conducted. No documents or records of any sort could be found that indicated that any were charged for care services. The only charges were in respect of rent. Several related issues have come to light and will be reported separately by the Director of Adult Social Services to Cabinet.

4.3. At what point in time could it have been recognised that the charges applied by Wirral Council might be unreasonable and therefore unlawful?

4.3.1. The Audit Commission Report "Charging with Care" of May 2000 stated in Section 45, page 25, the definition of 'reasonableness' which is crucial to determining legality of charging. The report states:

"Provided that decisions over the principles related to charging are properly debated and resolved then the resultant approach can be considered to be 'reasonable'". (Appendix 6).

The "Special Charging Policy" applied to residents of Bermuda Road, Curlew Way and Edgehill Road in 1997 was following a Committee Report that permitted debate, consequently it is, therefore, considered reasonable and lawful at that time and until the time when Fairer Charging should have been implemented i.e. April 2003, as decided at the previous Audit and Risk Management Committee, i.e. 23 September 2009.

4.3.2. However, there was a failure to submit a further report to Members on service users in Supported Living Accommodation, as stated in paragraph 4.24 of the Special Social Services Committee Report of 20 July 2000.

5. SUMMARY OF FINDINGS

5.1. Analysis of the survey of other local authority's charges is difficult to use to make comparisons as there were only 11 responses. Some authorities charged on an hourly rate or a sliding scale whereas Wirral charged based on income. Depending on the hours of care provided, some charges are comparable with Wirral's and the maximum charge of one approximated to Wirral's average for the period 1997/1998 to 2002/2003 which was £78. The approximate average for the other authorities is £45.

Some of those who made comments on Wirral's charging policy were critical of the level and considered it high.

- 5.2. Analysis of the documentary evidence indicates that in October 2000, some officers were aware the charges were not in accordance with best practice by virtue of not having been reported to Members in accordance with a previously reported intention. On 6 April 2001, they were in receipt of an evidenced recommendation that the charges should cease. This reinforced a previous document of 22 November 2000.
- 5.3 From interviews with officers and the examination of the documents located, it is clear that the situation concerning charging was confused but inevitably as the enquiry is about events which took place over 10 years ago and when the Department was in "Special Measures", records and memories are likely to be unreliable.

6. CONCLUSION

- 6.1. It is difficult to assess if the level of Wirral's charges was "unreasonable" as the charges made by other authorities are not directly comparable. Several charged on the basis of the level of care provided. It seems that some charged at levels comparable or even in excess of Wirral if a significant level of care was provided. However, the findings of The Audit Commission Report indicated Authorities were entitled to set charges in any way they considered appropriate and recognised all authorities would have different approaches and levels of charge. It also defined "reasonableness" as depending on debating and resolving the approach to charging, which was undertaken at the Social Services Committee, 3 September 1997.
- 6.2. The earliest document identified that draws to the attention of officers that the Special Charging Policy should be withdrawn is 22 November 2000, subsequently followed up on 6 April 2001 when the Supported Living Development Officer, wrote a Memorandum explaining the difference between the charges levied by the Special Charge Policy and those that would arise from implementing the policy resulting after the Charging Review of 26 July 2000.

7. FINANCIAL AND STAFFING IMPLICATIONS

- 7.1. The charging policy for supported living was not reviewed in accordance with 4.24 of the Special Social Services Committee report of 26 July 2000. Had the Policy been reviewed, Members may have implemented the wider charging policy to "in house" Supported Living, albeit the intention is unknown.
- 7.2. If this had been decided then the reimbursement for the 16 service users who were affected for the period 4 December 2000 to 31 March 2003 would total £127,700. This is calculated by reference to records of the amounts service users paid during the period, which were in excess of the charge that would have been levied had the

recommendation of the wider departmental charging policy been applied to Supported Living.

7.3. Any reimbursement of excess charge will require Cabinet approval. If the funding cannot be met within existing resources, it will also require Council approval. It is recommended that the cost of any reimbursement or other action is funded from the Department of Adult Social Service's Revenue Budget.

7.4. There are no staffing implications.

8. LOCAL MEMBER SUPPORT IMPLICATIONS

8.1. There are no local Member support implications.

9. LOCAL AGENDA 21 STATEMENT

9.1. There are no local agenda 21 implications.

10. PLANNING IMPLICATIONS

10.1. There are no planning implications.

11. EQUAL OPPORTUNITIES IMPLICATIONS

11.1. There are no equal opportunities implications.

12. COMMUNITY SAFETY IMPLICATIONS

12.1. There are no community safety implications.

13. HUMAN RIGHTS IMPLICATIONS

13.1. There are no human rights implications.

14. BACKGROUND PAPERS

14.1. Appendix 1 - Charging information provided by the north west Adult Social Services Local Authorities.

Appendix 2 - Comments from north west Local Authorities - "in house" Supported Living Units during the period 1997 to 2003.

Appendix 3 - "Charging Policy Review – Implications for Supported Living Schemes Briefing Note" has attached to it an internal address label dated 22 November 2000.

Appendix 4 - Memorandum dated 6 April 2001.

Appendix 5 - Wirral's weekly average income, allowance and financial assessment charge under the Special Charging Policy.

15. RECOMMENDATIONS

- 15.1. Members note the issues in this Report.
- 15.2. Members consider if further reimbursement is appropriate on the basis that no report into Supported Living Charging Policy was brought for consideration after July 2000.
- 15.3. If Members consider that reimbursement is appropriate, Members may consider a suitable reimbursement is at the level of the wider charging policy agreed in July 2000, albeit no evidence has been identified of the intention of the department at that time.

DAVID A GARRY
CHIEF INTERNAL AUDITOR

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WIRRAL COUNCIL

AUDIT AND RISK MANAGEMENT COMMITTEE

3 NOVEMBER 2009

REPORT OF THE CHIEF INTERNAL AUDITOR

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

Appendix 1 - Charging information provided by the north west Adult Social Services Local Authorities.

Appendix 2 - Comments from north west Local Authorities - "in house" Supported Living Units during the period 1997 to 2003.

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Appendix 4 - Memorandum dated 6 April 2001.

Appendix 5 - Wirral's weekly average income, allowance and financial assessment charge under the Special Charging Policy.

Appendix 6 - Audit Commission Report - May 2000 - Charging for Care - Extract - Page 25 - Section 45.

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Appendix 1

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

Charges for the care and support provided by Social Services staff to service users residing at "in house" Supported Living Units during the period 1997 to 2003.

Charging information provided by the north west Adult Social Services Local Authorities:

<u>Local Authority</u>	<u>Weekly Charge</u>
A	<p>Did not charge for the care provided in the home from 1997 to October 2002.</p> <p>Weekly charges from 2002 not provided.</p>
B	<p>Based on income from all benefits apart from DLA Mobility and comparing to the level of basic Income Support for the age and the SDP.</p> <p>If there was an excess then the weekly charge would be 50% of the excess.</p>
C	<p>Minimum weekly charge £6.00 - discretion for free service in exceptional cases.</p> <p>No maximum weekly charge. Maximum based on standard hourly rate x no of hours provided. As at 4.January 1999 £6.00 per hour.</p>
D	<p>Minimum weekly charge £3.00.</p> <p>Maximum weekly charge £27.00 (based on half DLA care component at that time).</p>
E	<p>£20 per week for those in receipt of lower DLA.</p> <p>£30 per week for those in receipt of higher DLA.</p>
F	<p>Minimum weekly charge £2.00.</p> <p>Maximum weekly charge of £30.50. (Banded charging) Attached Charge Policy applicable from 19 July 1999.</p>
G	<p>Weekly charge £35.00</p>
H	<p>Minimum weekly charge - 50% of DLA care rate.</p> <p>Maximum weekly charge - 50% of DLA care rate unless capital held or compensation for personal injury.</p>

I	Weekly charge - £nil The Authority had its own Policy from 1993. Service users were "passportted" free during the period 1993 to 2003.
J	Variable weekly charge based on the service users financial assessment. However, the Authority did not provide details of the weekly charge.
K	Minimum weekly charge £12.16 Maximum weekly charge £73.40 (Care assessed between level 1 and 5).

Appendix 2

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

Comments from north west Local Authorities - "in house" Supported Living Units during the period 1997 to 2003.

<u>Local Authority</u>	<u>Comments</u>
A	None Provided.
B	Compared to our policy this seems quite severe. We decided early on that we wanted to ensure that service users were not left with just Income Support, even though this would be more than res. care would do.
C	<p>If compared in hindsight to basic fairer charging principle of allowing basic IS plus a 25% buffer, this principle would have been breached as there would appear to be no buffer in the majority of cases.</p> <p>Not comparable with ILF assessment regulation of taking SD premium and ½ DLA Care which I think (although not entirely sure) was already in place at that time.</p> <p>Extension of charging policy to learning disabilities clients agreed with Learning Disabilities Sub Committee in September 98.</p> <p>Legality of policy was scrutinised by Legal services – no questions of illegality were raised.</p> <p>Our policy gave a personal allowance which was the same for all clients. This was the equivalent of the basic income support for over 60's plus £15.00. 50% of excess income was then charged.</p> <p>There was an appeals process. Extra expenses could be allowed based on carer's expenses and expenses for activities identified in the care plan.</p>
D	<p>The inclusion of the full amount of additional benefit awarded to individuals because of their disabilities leaves them with income levels equivalent to a non disabled person living on benefits. On the surface this appears to leave the disabled service user in the same financial position as a non disabled individual living on benefits. Social policy research has long established that disabled people incur additional costs because of their disability. This underpins the thinking behind the award of disability benefits. The effect of charging in the manner adopted by Wirral is that rather than creating parity this approach puts people with a disability at a distinct disadvantage and they no longer have additional income to pay for the extra costs incurred because of their disability. Following the introduction of the fairer charging guidance in October 2002 the inclusion of disability benefits as income for charging without any regard to spending on disability related items was contrary to the guidance.</p>

E	None Provided.
F	None Provided.
G	Understanding was that up to 2003 authorities could charge what they deemed suitable. Most adopted a flat rate. This authority only took into account the DLA and ignored SDP, approx half of what Wirral charged. Whether this is more suitable would be a matter influenced by local circumstances that would have been reasonable at that time.
H	<p>Our Authority along with other Councils had a major task in implementation of the guidance on fairer charging in accordance with the timescales required. Prior to the guidance our Authority had a system of flat rate charges for services provided. A passport system for those who paid over £30.00 per week was available to those people most in need together with an appeals policy was available to consider case of hardship under the flat rate charging system.</p> <p>While charging is not mandatory, there is an expectation from central government that Council's will charge for services, LAC (94) (1) refers. Health & SSD Social Security Adjudications Act 1983 say that Local Authorities may charge for most services. In the case of non-residential services charges must be reasonable and not more than reasonably practical for the individual user to pay. It is up to each Council to determine the policy for non-residential care services as there is no national scheme just guidance.</p> <p>Service user need to be informed of their right of appeal if they consider charges to be unreasonable and informed of the reasons of any decision. Where a client lack capacity to deal with their own financial affairs support to appeal may be required if no legal representative appointed or family member is able to offer support. It is my view that clients should be left with a reasonable amount of money for personal needs from chargeable benefits.</p>
I	No guidelines were given during that period. Charging would have been up to the discretion of the LA.
J	None Provided.
K	None Provided.

METROPOLITAN BOROUGH OF WIRRAL	
To: 1	[REDACTED]
Locality:	HQ
From:	[REDACTED]
	A.O.T.
Date:	22-11-00



Metropolitan Borough of Wirral

Social Services Department

Charging Policy Review – Implications for Supported Living Schemes Briefing Note

There is currently a special charging policy which applies to people who access Supported Living Services also known as Independent Living Schemes, Community Living or Group Homes. It may also apply to people who had been placed with foster carers but who are now aged over 18.

Service users subject to the above policy were not included in charging policy review which was presented to a special Social Services Committee 26 July 2000. Para 4.24 of this report stated that "a further report will be submitted to Adult Community Care Panel and Social Service Committee outlining charging management for this client group".

However, the proposals outlined in the revised charging policy should be considered applicable. In summary, the proposals are that:-

- ❖ When disposable income is below £7.40 over basic income support level there is no charge
- ❖ When disposable income in excess of £7.40 over basic income support a charge of 27% is applied or the price for the care package whichever is the lower (most usually in supported living it will be the former)
- ❖ A charge against severe disability premium of 27% be applied
- ❖ When AA or DLA care component is received a charge of 14% of that benefit is applied

The income implications of applying revised charging policy to supported living services is as follows:

	Special Charging Policy	Charging Policy Review	Income Deficit
D.L.A. Care (higher)	53.55	7.50	46.05
(middle)	35.80	5.00	30.80
(lower)	14.20	-	14.20
S.D.P.	40.20	10.85	29.35

Accordingly, each service user accessing supported living services will be better off 86% in respect of DLA (Care) and 73% of SDP. Income deficit should be recovered through transitional housing benefit scheme of Supporting People Framework. Therefore it is fundamental to implementing charging policy review that housing benefit claims are maximised. Moreover this policy should be applied to private/independent placements where "the Department has secured an intensive

holistic package based on an assessment of social care needs throughout each 24 hour period" (Special charging policy). This presently does not happen.

The principles outlined in charging policy review comply more fully with CIPFA guidance on developing charging policies in respect equity, consistency and simplicity. It is therefore recommended that the special charging policy be withdrawn. Further recommendations include:

- ❖ Monitoring of transitional housing benefit claims
- ❖ Effective systems for recovery of transitional housing benefit relating to support from care providers
- ❖ Further consultation with independent/private care providers in respect of applying revised charging policy

For comment –

cc

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]eb/chargpolmm

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memorandum

APPENDIX 4

to: [redacted]
Divisional Manager
Finance & Operational Support

date: 06 April 2001

[redacted]
Residential & Community Support Finance Manager

from: [redacted] Supported Living Development Officer

my ref: [redacted] JB
your ref:
tel:

subject: **RE: SUPPORTING PEOPLE - CHARGING CONSULTATION PAPER**

Attached, Supporting People consultation paper on charging and means testing. Further details of how charging will operate in Supporting People will be laid out following the outcome of the consultation.

Thanks.

[redacted]

[redacted]

Supported Living Development Officer

Enc





Metropolitan Borough of Wirral

Social Services Department

Charging Policy Review – Implications for Supported Living Schemes Briefing Note

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- ❖ Effective systems for recovery of transitional housing benefit relating to support from care providers
- ❖ Further consultation with independent/private care providers in respect of applying revised charging policy

For comment –

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]/eb/chargpolmm

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Appendix 5

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

Wirral's weekly average income, allowance and financial assessment charge under the Special Charging Policy.

Period	Weekly Average Income	Average Weekly Allowance*	Weekly Average Financial Assessment Charge	Weekly Average Charge as % of Income
Oct/Dec 1997 to March 1998	£152.35	£89.02	£63.33	41.57%
April 1998 to March 1999	£164.31	£91.01	£73.30	44.61%
April 1999 to March 2000	£173.40	£92.77	£80.63	46.50%
April 2000 to March 2001	£181.39	£99.48	£81.91	45.16%
April 2001 to March 2002	£187.71	£104.48	£83.23	44.34%
April 2002 to March 2003	£191.59	£107.77	£83.82	43.75%
Average	£175.13	£97.42	£77.70	44.37%

Note:

* Allowance is the amount of income the service user retains for their own use.

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

Audit Commission Report - May 2000- Charging for Care

Extract - Page 25 - Section 45

2 • WHY ARE COUNCILS CHARGING?

Much of this guidance focuses on questions of process... Little is said about how 'reasonableness' should be interpreted

45. Much of this guidance focuses on questions of process – over how charges are managed, such as the operation of appeals systems or the monitoring of service take-up. Little is said about how 'reasonableness' should be interpreted. The implication is that this questions has no 'right answer'. Provided that decisions over the principles related to charging are properly debated and resolved, then the resultant approach can be considered to be 'reasonable'. Currently, the only clarification available to managers has come as a result of legal precedent. But even when a legal ruling is made, councils are often divided about how it should be interpreted. For example, while many councils use 'banded' systems to split users into groups based on benefits received, one council visited dismissed this option as contradicting a ruling that all income sources should be treated the same.

What drives councils' approaches to charging?

46. The analysis carried out of councils' most recent reviews of charging policies shows that financial considerations dominate, overriding concerns about the equity, affordability or understandability of charges (EXHIBIT 7). Given a straight choice between cutting services by tightening eligibility criteria or maintaining services by increasing charges, increasing charges is often seen as the lesser of two evils (although 15 per cent of councils did both in their most recent reviews). Reviews of charges are rarely linked with wider issues of service planning and delivery.

EXHIBIT 7
Results of recent reviews
Financial considerations dominate many charging reviews.

Reason	Percentage
Increase in revenue raised from charges	60%
Significant increase in level of charges (ie, above inflation)	45%
Greater account taken of ability to pay	42%
Closer relationship between charge and care received	40%
Introduction of charges for some previously free services	30%
Alignment with corporate anti-poverty policy objectives	25%
System more simple (easier to understand/administer)	20%
Changes to eligibility criteria	15%
Reduction/abolition of some/all charges	10%
Charging introduced (previously all services free)	5%

Source: Audit Commission survey

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WIRRAL COUNCIL

REPORT OF THE DIRECTOR OF ADULT SOCIAL SERVICES

AUDIT AND RISK MANAGEMENT COMMITTEE 3 NOVEMBER 2009

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

Executive Summary

The purpose of this report is to update members on the actions undertaken by the Department of Adult Social Services in response to the Public Interest Disclosure Act 1998 (PIDA). The report has been set out to inform members as to the actions completed by January 2009 at which point this report was delayed whilst the investigation into audit and disciplinary matters were undertaken. The actions completed since January 2009 and any matters which remain outstanding have therefore been identified separately.

1 Background

1.1 The PIDA report produced by the Audit Commission identified 5 broad actions:

- *Complete the outstanding matters in respect of the Supported Living contracting process, including the completion of contracts by current providers (AC R1).*
- *Clarify plans for the subsequent re-tendering of the Domiciliary Care Contract (AC R2).*
- *Formalise and embed contract monitoring arrangements for Supported Living contracts (AC R3).*
- *Complete outstanding financial assessment reviews for service users with Learning Disabilities, ensuring required financial compensation is provided (AC R4).*
- *Ensure appropriate safeguards are applied to protect vulnerable service users from the risk of any potential financial abuse. (AC R5).*

1.2 Progress has been made through a series of sub actions, most of which have been completed as outlined in the attached action plan (Appendix I).

1.3 In addition to the Audit Commission Report an Internal Audit Report dated 13 March 2008 identified 7 broad actions in relation to the PIDA:

- *Written procedures should be compiled for the accreditation process. They should be comprehensive and ensure fair competition and a consistent approach is maintained. They should be authorised by the DASS Strategic Leadership Team and be readily available to all relevant staff.*

- *To ensure a fair and consistent desktop evaluation and interview process, the same panel should be involved in both.*
- *All desktop evaluations should be validated by a second member of the panel. This should be evidenced with a signature and date.*
- *Each interview sheet should be scored, signed and dated by the individual undertaking the interview. This should be completed at the conclusion of the interview.*
- *The service provider should return a signed General Service Agreement prior to the inclusion of the Accredited List.*
- *A formal system for contract monitoring and the standard of care being proved by the service providers, should be introduced.*
- *A record of the Panel's decision on which service provider to procure services from should be retained to ensure an effective audit trail exists.*

1.4 All of these actions were completed by 28 November 2008 and are shown in detail in Appendix 1.

1.5 A further three recommendations were made by Internal Audit in their report to Audit and Risk Management Committee on 4 November 2008. These were endorsed by members and comprised:

- (i) *Immediately review the procedures in operation within the department for evaluating the performance of independent living providers on an ongoing basis, to ensure that provision is made for the inclusion of the views and opinions of officers of the Council undertaking work in these areas regarding the effectiveness of individual providers.*

RESPONSE: The Department monitors the performance of independent supported living providers against a contract monitoring framework introduced in January 2009. The framework includes a survey of key stakeholders to ensure that the views of people who use the service, relevant members of DASS, clinical staff, and staff working for providers are heard and they have an opportunity to comment and raise any concerns they may have. Measuring the effectiveness of each provider in delivering outcomes is an integral to the monitoring process and this approach has also been embedded in the Learning Disability Review Team.

- (ii) *Immediately implement all of the outstanding recommendations identified in the Audit Commission and Internal Audit reports dated March, August and October 2008 respectively.*

RESPONSE: The Department has implemented actions as detailed in Appendix 1

- (iii) *Immediately review the procedures in operation within the department for evaluating reported issues of this nature and determining the most appropriate actions to be taken to investigate them and assess the adequacy and effectiveness of these arrangements.*

RESPONSE: The Department logs all reports from Internal Audit in the Finance Section by the Principal Officer for Resources and forwards them to the Director for approval to action and for monitoring arrangements to be agreed. Regular monitoring reports are provided to the Strategic Leadership Team on progress by the Principal Officer who attends SLT to personally report on this.

2. Actions completed by January 2009

- 2.1 Members are advised that most of actions outlined in Appendix 1 were completed by January 2009 at which point a report was prepared for Cabinet. However this report was delayed whilst the investigation into audit and disciplinary matters were undertaken.
- 2.2 The key actions that were completed by January 2009 include:
- The accreditation of all providers
 - The development of a Quality Assessment Framework for Wirral
 - Financial Assessments completed for all people supported by in-house provision.
 - Signed contracts in place for all providers.

3. Actions completed since January 2009

- 3.1 Since January 2009 the key actions that have been completed include:
- Financial Review **of all people** supported by independent sector providers.
 - Value for money appraisal of existing domiciliary care arrangements

4 Ongoing actions

- 4.1 It will be seen from the above paragraphs and the detail in Appendix 1 that most of the actions set to respond to issues highlighted by the PIDA have been completed. The following actions are listed in Appendix 1 as “ongoing” for which explanations are given below.
- 4.2 **Review all LD People who Use Services (AC R4).** The Specialist Adult Learning Disabilities Review Team is working through a scheduled programme of reviews of all people with Learning Disabilities in Supported Living tenancies where the Department funds their support. The team has robust written procedures and staff from a number of disciplines (social

care, contracts, and finance) to ensure that the needs and outcomes of people receiving services are met. There is robust senior operational management oversight and quality control of the Team with the Supported Living providers involved and targets have been set for the completion of these reviews.

4.3 Review current Domiciliary Care contract in terms of the personalisation agenda and context of individual budgets (ACR2).

The department is currently undertaking a pilot of personal budgets the outcome of which will be used to inform the contracting process. The department is working with the corporate procurement team to ensure that future contracts in general are time limited and provide a more robust arrangement for the market. The department's response to personalisation agenda through contracts is also being developed and a report will be presented to Cabinet in November 2009 setting out a range of options for members to consider. Some initial work to develop and new domiciliary care contract has been undertaken with consideration being given to personalisation, the shape of delivery taking into account the department move to locality working, and closer working with NHS Wirral.

4.4 As part of the PIDA action plan Providers confirmed that they were acting as appointees for 22 people. Whilst this remains an individual's choice it is discouraged by the Council as there are potential conflicts of interest, The Council can offer to become the appointee for these people as an alternative option, but cannot enforce it. To date 5 people have agreed to take advantage of the offer and we will continue to promote its take-up.

5. Contract Monitoring

5.1 The department currently has 257 people supported by 26 accredited supported living providers. In Wirral there are a further 20 accredited providers with whom no people are currently placed by DASS. Since the monitoring process was launched in January 2009 the Contracts Monitoring Team has completed 10 spot check inspections and 9 full inspections. Most of these inspections have been carried out jointly with a seconded officer from the Supported Living Team. Following each inspection an action plan is agreed with the Provider and its implementation monitored with follow up visits being arranged where appropriate.

5.2 Annual Contract monitoring visits/inspections are being undertaken by the Contracts Team for all supported living providers.

5.3 However contract monitoring and quality control is also a matter for future work in the context of broader developments in the transformation/ personalisation agenda. These include the role and place of Wirral's Local Involvement Network (LINK) – members will be aware that this new organisation has a statutory role to monitor the quality of provision across health and social care. In turn as we develop our new contracting approach expectations upon providers and some more comprehensive

person centred arrangements will be developed. These will be reported separately.

6 Financial and Staffing Implications

- 6.1 The financial implications of this report will be contained within the revenue budget available to the Department of Adult Social Services.
- 6.2 There are no staffing implications arising from this report.

7 Equal Opportunities Implications

The action plan addresses historical issues relating to inequalities and ensures equity for the future

8 Local Member Support Implications

People who live in supported accommodation potentially live in all parts of Wirral

9 Human Rights Implications

No known human rights implications

10 Community Safety Implications

The action plan ensures that people within supported accommodation are safeguarded

11 Planning Implications

No known planning implications

12 Health Implications

- 12.1 The Quality Assessment Framework developed for Supported Living tests a broad range of issues relating to the health and wellbeing of people living in supported living homes funded by the department. Specifically Standard 11 of the framework requires providers to demonstrate and evidence how health needs are facilitated.
- 12.2 Wirral NHS is in the process of rolling out a programme to ensure that all people with a learning disability receive a health check from their GP and other professionals from the NHS. The Health Action Group, a sub group of the Learning Disability Board is in the process of revising the Strategic Health Action Plan for March 2010 which will build further on the work done on health passports and health checks.

13 Background Papers

Audit Commission PIDA Action Plan August 2008
Internal Audit of Accreditation process 13 March 2008
Internal follow up report dates 29 October 2009.

14 Recommendations

That

- 1) Members note progress.

John Webb
Director of Adult Social Services
23 October 2009

Mal Price
Principal Manager – Quality Assurance and Customer Care
Tel No 666 4785
23 October 2009

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
Audit Commission Recommendations								
AC R1	Complete the outstanding matters in respect of the supported living contracting process, including the completion of contracts by current providers	2	Mal Price Principal Manager QA&CC (Overarching Responsibility for this action)		November 2008			
1			Rick O'Brien Head of service Access and Assessment	Establish a Learning Disability Review Team to review all supported living arrangements.	01/08/08	01/08/08	01/08/08	Completed
Page 39			Rick O'Brien Head of service Access and Assessment	Second experienced Contracts Manager to LD Review Team	01/08/08	24/08/08	24/08/08	Completed
39			Gerry Flanagan Commissioning Manager (Please note that this officer left the Department in January 2009)	Second a member of the Supporting People Team into the LD Review Team	01/11/08	17/11/08	17/11/08	Completed. A member of staff from the Regeneration Department Supporting People Team was seconded to the LD Review Team for 6 months to May 2009. This allowed for the development of enhanced contract monitoring processes and provided the LD Review Team with a much improved insight into Supporting People Issues and has subsequently facilitated improved cross-department working

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
Page 40			Rick O'Brien Head of service Access and Assessment	Review all LD people who use services	31/03/10	01/08/08		Ongoing. The Specialist Adult Learning Disabilities Review Team is working through a scheduled programme of reviews of all people with Learning Disabilities in Supported Living tenancies where the Department funds their support. The team has robust written procedures and staff from a number of disciplines (social care, contracts, and finance) to ensure that the needs and outcomes of people receiving services are met. There is robust senior operational management oversight and quality control of the Team with the Supported Living providers involved and targets have been set for the completion of these reviews. As part of the continuing transformation agenda all people with a learning disability will be offered the opportunity to have a personal budget by 31 March 2011. This work will commence in November 2009.
	5		Mal Price Principal Manager QA&CC	Ensure a signed contract is in place for all independent sector providers with whom people are placed	30/11/08	01/08/08	31/01/09	Completed
	6		Gerry Flanagan Commissioning Manager	Apply the accreditation process to in-house provision of supported living.	31/12/08	01/08/08	23/12/08	Completed
	7		Mal Price Principal Manager QA&CC	Apply full accreditation process to all existing providers (With Business)	31/01/09	01/11/08	31/03/09	Completed

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
AC R2	Clarify plans for the subsequent re-tendering of Domiciliary Care Contract.	2	Mal Price Principal Manager QA&CC (Overarching Responsibility for this action)		February 2009			
1			Mal Price Principal Manager QA&CC	Undertake a value for money appraisal of existing contracting arrangements for domiciliary care.	28/02/09	15/12/08	05/02/09	Completed. A single fee was approved by Cabinet on 19 March 2009 and implemented from April 2009 as a result of this action.
2			Mal Price Principal Manager QA&CC	Review current contract in terms of personalisation agenda and context of individual budgets.	30/09/09	01/02/09		Ongoing. Options to develop contracts to reflect personalisation to be reported to members in November 2009 for implementation in 2010.
AR3	Formalise and embed contract monitoring arrangements for supported living contracts	2	Gerry Flanagan Commissioning Manager (Overarching Responsibility for this action)		November 2008			
1			Gerry Flanagan Commissioning Manager	Develop a Quality Assessment model for Wirral	30/11/08	05/11/08	02/12/08	Completed
2			Gerry Flanagan Commissioning Manager	Develop a Monitoring schedule of all Supported Living Providers	30/11/08	05/11/08	02/12/08	Completed
3			Gerry Flanagan Commissioning Manager	Undertake 10 spot check inspections to test monitoring framework	03/12/08	26/11/08	03/12/08	Completed

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
4			Mal Price Principal Manager QA&CC	Report on the key findings of spot check inspections to Strategic Leadership Team. To be used to inform the approach being taken when the schedule of full inspections commences in January 2009	30/11/08	04/12/08	27/01/09	Completed
5			Gerry Flanagan Commissioning Manager	Inform all Accredited Providers in writing how the contract monitoring framework will be implemented	31/12/08	12/12/08	12/12/08	Completed.
AC R4 Page 42	Complete outstanding financial assessment reviews for service users with Learning Disabilities, ensuring required financial compensation is provided	3	Sandra Thomas (Overarching Responsibility for this action)		December 2008			
1			Sandra Thomas	Undertake Financial Assessments for all 83 people supported in-house supported living services.	30/11/08	01/10/08	21/11/08	Completed. All people who use services who are being reviewed are offered access to Advocacy Services and a benefits check prior to the commencement of the review.
2			Sandra Thomas	Undertake a Financial Review for people supported in independent supported living provision.	31/03/09	03/12/08	29/05/09	Completed

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
AC R5	Ensure appropriate safeguards are applied to protect vulnerable service users from the risk of any potential financial abuse	3	Mal Price Principal Manager QA&CC (Overarching Responsibility for this action)	All desktop evaluations should be validated by a second member of the panel. This should be evidenced with a signature and date	December 2008			
1			Gerry Flanagan Commissioning Manager	Revise LD Review Team letter informing people about their pending review to include an offer to facilitate a review of their personal finances and details of how to access advocacy support	31/12/08	24/12/08	01/12/08	Completed
2			Gerry Flanagan Commissioning Manager	Develop and distribute a guidance note to all providers on Daily Living Allowances in supported accommodation.	11/12/08	01/12/08	11/12/08	Completed.
3			Gerry Flanagan Commissioning Manager	Develop an "Easy read" guide to Daily Living Allowances for people who use services in consultation with people who use services. To include information on how to access advocacy services for assistance..	31/01/09	01/12/08	11/12/08	Completed
4			Gerry Flanagan Commissioning Manager	Obtain confirmation in writing from providers of the numbers and details of people placed with them for whom they act as appointees.	12/12/08	03/12/08	30/12/08	Completed.
5			Steve Passey Service manager Safeguarding	Service Manager for Safeguarding to review the issues at the heart of the original concern and confirm improvements have been made.	20/11/08	01/11/08	20/11/08	Completed.

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
6			Gerry Flanagan Commissioning Manager	Ensure that all safeguarding requirements are robust at the interview stage of the accreditation process.	01/11/08	01/11/08	01/11/08	Completed.
7			Gerry Flanagan Commissioning Manager	Confirm that all accredited providers are working to the protection of Vulnerable Adults/Safeguarding Policy for Wirral.	31/12/08	11/12/08	31/01/09	Completed.
8			Steve Passey	Service Manager and Safeguarding Officer undertaking further review of accreditation process and contract monitoring framework.	17/12/08	16/12/08	17/12/08	Completed. A further full review of the Safeguarding process was completed in September 2009 which has been reported to members separately.
Page 44			John Webb Director of DASS	Ensure that Contracting, Quality Assurance and Safeguarding functions of DASS are brought together within a single portfolio managed by a Principal Manager.	01/01/09	19/11/08	19/11/08	Completed

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
Internal Audit Report dated 13 March 2008								
Internal Audit R1	Written procedures should be compiled for the accreditation process. They should be comprehensive and ensure fair competition and a consistent approach is maintained. They should be authorised by the DASS Strategic Leadership Team and be readily available to all relevant staff	3	Gerry Flanagan Commissioning Manager (Overarching Responsibility for this action)					
Page 49			Gerry Flanagan Commissioning Manager	Develop comprehensive accreditation procedures.	29/10/08	01/11/08	28/11/08	Completed
			Gerry Flanagan Commissioning Manager	Obtain DASS Strategic Leadership Team approval for accreditation procedures	29/10/08	01/11/08	28/11/08	Completed
3			Gerry Flanagan Commissioning Manager	Ensure accreditation procedures are available to all contract and commissioning staff.	29/10/08	01/11/08	28/11/08	Completed

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
Internal Audit R2	To ensure a fair and consistent desktop evaluation and interview process, the same panel should be involved in both		Gerry Flanagan Commissioning Manager (Overarching Responsibility for this action)					
1			Gerry Flanagan Commissioning Manager	Ensure that the accreditation procedures clearly state that the desk top evaluation and accreditation panel interviews must involve the same officers.	29/10/08	02/04/08	29/10/08	Completed
2			Gerry Flanagan Commissioning Manager	Ensure that records evidence that the same officers have undertaken desktop evaluations and were involved in the interview panel for all completed assessments	29/10/08	01/10/08	29/10/08	Completed
Internal Audit R3	All desktop evaluations should be validated by a second member of the panel. This should be evidenced with a signature and date		Gerry Flanagan Commissioning Manager (Overarching Responsibility for this action)					
1			Gerry Flanagan Commissioning Manager	Ensure that the procedure requires desktop evaluations to be validated by a second panel member, dated and signed.	29/10/08	01/10/08	29/10/08	Completed
2			Gerry Flanagan Commissioning Manager	Ensure that records evidence validation signatures have been provided for all panels held to date.	29/10/08	01/10/08	29/10/08	Completed

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
Internal Audit R4	Each interview sheet should be scored, signed and dated by the individual undertaking the interview. This should be completed at the conclusion of the interview.		Gerry Flanagan Commissioning Manager (Overarching Responsibility for this action)					
1			Gerry Flanagan Commissioning Manager	Ensure that the procedure includes a requirement that interview panel members must score and sign their interview sheet.	29/10/08	01/10/08	29/10/08	Completed
2			Gerry Flanagan Commissioning Manager	Ensure that all interview records to date have been scored and signed.	29/10/08	01/10/08	29/10/08	Completed
Page 47			Gerry Flanagan Commissioning Manager	Ensure that all accreditation documents are kept on file to maintain an audit trail	29/10/08	01/10/08	29/10/08	Completed
Internal Audit R5	The service provider should return a signed General Service Agreement prior to the inclusion of the Accredited List		Gerry Flanagan Commissioning Manager					
1			Gerry Flanagan Commissioning Manager	Ensure General Service Agreements have been signed for accredited providers.	30/11/08	01/08/08	28/11/08	Completed (See AC R1-5)
2			Gerry Flanagan Commissioning Manager	Provide evidence of signed contracts for specific providers identified by internal audit in March 2008	28/10/08	01/11/08	28/11/08	Completed

Ref	Issue	Priority	Responsibility	Supporting Actions	Target date	Start Date	End Date	Status
Internal Audit R6	A formal system for contract monitoring and the standard of care being proved by the service providers, should be introduced		Gerry Flanagan Commissioning Manager (Overarching Responsibility for this action)					
1				Introduce a formal contract monitoring process.			28/11/08	Completed. (Contract Monitoring Arrangements have been introduced as outlines in AC R3 of this report).
Internal Audit R7	A record of the Panel's decision on which service provider to procure services from should be retained to ensure an effective audit trail exists		Gerry Flanagan Commissioning Manager (Overarching Responsibility for this action)					
Page 48				Ensure that the Accreditation procedure clearly states the requirement for all panel decisions to be recorded and retained on file for each provider as an audit trail	28/10/08	30/11/08	29/10/08	Completed

WIRRAL COUNCIL

REPORT OF THE DIRECTOR OF ADULT SOCIAL SERVICES

AUDIT AND RISK MANAGEMENT COMMITTEE 3 NOVEMBER 2009

CHARGING ARRANGEMENTS FOR SUPPORTED LIVING, WIRRAL 1997 - 2003

Executive Summary

The purpose of this report is to provide to the Committee my professional comments and views on the policies and practices with regard to Supported Living which were in place in Wirral during the period 1997 – 2003 which have given rise to so much concern. The report is intended to complement both that of the chief internal auditor who has been asked by the Committee to undertake some further investigations and my report elsewhere on the agenda dealing with the wider matters raised in the PIDA. The report also refers to the position at Balls Road, which has been raised in previous reports.

1 Background

1.1 The 1997 Charging Policy.

The report of the chief internal auditor contains comments and comparative information obtained from other local authorities. My own comments are as follows.

1.2 The context of the time needs to be understood. There had, at an earlier period, been two ways in which councils supported adults with needs through their social services departments. For those whose needs were very significant, provision was made in residential and nursing homes. The arrangements for charging for this provision were set out (as indeed they still are) in national regulations Charging for Residential Accommodation Guide (CRAG). Councils had little discretion about how to operate such charging and it was, and remains, very significant for individuals, taking account of their income and any available capital. From the point of view of councils, it provided a significant offset against the cost of making the provision. Historically, councils had also provided help to those living at home, with lower levels of need. This had, at one time, comprised mainly help with cleaning and shopping. Some councils provided this service without charge (indeed a small number still do), some made charges, but with services provided being fairly modest, the charges themselves were correspondingly limited.

1.3 In the years before 1997, it was becoming more and more the practice for councils to seek some third way, whereby through offering more intensive help to people, they were enabled to stay in their homes and avoid or at least delay the critical step of going into residential accommodation. For people with high levels of learning disabilities the concept of “supported

living”, whereby relatively high levels of support were provided as an alternative to residential placement, was being developed. However, the problem for councils was that there was a “perverse disincentive” in making such provision in that the cost was high – perhaps as expensive as residential placement – but Charging for Residential Accommodation Guide (CRAG) could not apply as this was limited to residential placement. Nevertheless councils did, as in Wirral, seek to find ways to develop such provision in order to improve people’s lives. They were, however, faced with the conundrum of how and how much to charge.

1.4 Without any clear national guidance a plethora of different charging arrangements arose throughout the country. This was clearly unsatisfactory and in 2000 the Audit Commission produced a national report “Charging with Care” which described in detail the rather anarchic position across the country with regard to charging. This is an extensive document (although it recognises itself that it could not fully describe the huge range of different charging arrangements which had grown up both between and often within authorities).

1.5 On the question of Council policies it states:

“In the absence of a consensus over how to proceed and with little guidance over how to interpret their duty to ensure charges are “reasonable” and “practicable to pay”, councils have developed a range of approaches to the design and management of home care charges” (paragraph 21).

1.6 Further (speaking of existing guidance):

“Little is said about how “reasonableness” should be interpreted. The implication is that this question has no “*right answer*”. Provided that decisions over the principles related to charging are properly debated and resolved, then the resultant approach can be considered to be “reasonable” (paragraph 45).

1.7 The report led, in turn, to the first comprehensive guidance covering all non residential charges – Fair Charging, which was issued in November 2001.

1.8 This background to the state of matters at that time is provided in order better to understand the position in Wirral. With the benefit of hindsight and in particular, with the knowledge of the arrangements brought in following the reviews and guidance described above, my judgement would be that the policy adopted by Wirral in 1997 which appears to have been written very much to address the particular position of people moving from a residential home – Esher House, into their own tenancies, was inflexible and did not take as full an account of all people’s needs as I would have thought desirable. Nevertheless, it is quite clear that it was not the intention of the Council at that time to disadvantage these individuals – rather the Council was seeking to make an improvement in their lives and enable them to have greater independence than would have been the case had they remained in residential accommodation. I do not consider, again within the context of

the time, that the policy could have been regarded as being so “unreasonable” as to question its legality. This is, of course, ultimately a legal question, but that is my judgement as a social worker.

2. 1997 - 2000

- 2.1 It does not appear to me from the documentation I have seen, including that presented to internal auditors, that the policy agreed in 1997 was challenged or questioned in the years immediately following (up until late in 2000) This is, it must be borne in mind, a period in the history of the department where there is considerable confusion. The department was put into Special Measures at this time (1999 to 2002) and quite clearly matters of internal administration and governance lay at the heart of the problems which led to that designation. It is not entirely surprising, therefore, that there was a period where there was indeed confusion and inconsistency. Nevertheless, what appears to be clear is that for whatever reason, the policy recommended to the Social Services Committee in 1997 and adopted by the Council, was not applied consistently to subsequent Supported Living places that were being established.
- 2.2 Whilst it appears from the interviews conducted by auditors to have been impossible to clarify precise reasons why this was not done, it is possible to surmise that this arose, either from the confusion referred to above, or from a perception that the needs of service users in other settings were very different and that the 1997 policy was inappropriate or, quite likely, a combination of both. The former residents of Esher House had high levels of need which required 24 hours support. The cost of this will have exceeded the contributions provided. Other service users moving into other supported living settings will have had varying levels of need. The 1997 policy, as I indicate above, did not provide a satisfactory framework, with sufficient flexibility to meet varying levels of need. Clearly, if this is the position that developed – and that appears to be the case – then officers should have placed before Members the anomalies that were arising and the need to provide for a more flexible and appropriate policy.

3 2001- 2003

- 3.1 Following the Audit Commission report on Charging in 2000 and in the lead up to and following the issue of Fair Charging guidance in 2001 there were further opportunities to lay clearly before Members the position with regard to charging that was developing across the Borough, and to place that within the context of the requirements of Fair Charging (which was due to become operative by no later than April 2003). These opportunities appear to have been missed. A further complexity at the time would have been the development of the “Supporting People” programme which was launched on 1st April 2003, to provide housing related support to help vulnerable people to live more independently and maintain their tenancies. There were numerous reports about Fair Charging and working parties operating, but these failed to provide sufficient clarity for Members to make appropriate decisions. During this period (from 2000-2003) there is evidence that

concerns about anomalies and a failure to collect income through not applying charges to some service users were raised within the department, but these did not lead to timely action.

- 3.2 It has already been agreed by the Committee that the slowness in responding to Fair Charging in so far as a new policy was not implemented by April 2003 was in effect unfair to the former residents of Esher House, who continued to be charged according to the 1997 policy.
- 3.3 To sum up, the main points I would wish the Committee to bear in mind when considering this complicated and fraught issue are as follows:
- The original policy for Supported Living was produced in a vacuum of national guidance
 - Whilst, as I have described above, I would have reservations about that policy, the question is: does it fall outside the parameters of what could possibly be regarded as reasonable when Members made the decision to adopt the policy? My view is that it does not.
 - The purpose of the Council in moving people from Esher House was to provide them with greater independence with greater access to benefits which would enable them to enjoy that independence whilst providing an intensive, 24 hour, level of support.
 - There was a clear failure as the position developed, to review and broaden that policy so as to encompass varying needs of people as supported living settings were developed.
 - This was a period when the department was in Special Measures with considerable turmoil, confusion and staff turnover.
 - The department was slow and late in introducing the Fair Charging policy, but it was introduced and has been applied since 2006
 - This issue needs to be resolved, not only in fairness to service users, who have been disadvantaged by these failures, but also to those service users whose needs have to be met by the current serving members of the Department who are under great pressure to deliver a hugely ambitious agenda while maintaining what I genuinely believe are good and improving levels of service to the people of Wirral.

4 Balls Road

The report of the 23rd September 2009 contains reference to the position at Balls Road. There has been confusion about this. Internal Audit have made clear that the “special charging policy” (ie that devised for charging for care in supported living settings in 1997) was not applied here. However, investigations into the charges that have been made for rent and service charges have shown apparent anomalies that need to be resolved. The detail is complex. Once I am satisfied that the history of this has been satisfactorily unravelled, I will write to Members explaining the position. If any action is required as a result of this work, I will report appropriately to Cabinet.

5 Financial and Staffing Implications

The financial implications are dependent on any decision made regarding reimbursement. Options are set out in the Chief Auditor's report.

6 Equal Opportunities Implications

The report provides my views and comments on policy and practice with regard to charges for services in Wirral 1997-2003. These policies and practices may be seen as affecting equal opportunities.

7 Local Member Support Implications

There are no implications arising out of this report.

8 Human Rights Implications

The report provides my views and comments on policy and practice with regard to charges for services in Wirral 1997-2003. These policies and practices may be seen as affecting human rights.

9 Community Safety Implications

There are no implications arising out of this report.

10 Planning Implications

There are no implications arising out of this report.

11 Health Implications

There are no implications arising out of this report.

12 Background Papers

Committee Reports and internal documents.

13 Recommendations

Members are asked to consider the views and comments set out in this report.

JOHN WEBB
Director of Adult Social Services

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