

AUDIT AND RISK MANAGEMENT COMMITTEE

Wednesday, 23 September 2009

<u>Present:</u>	Councillor	P Southwood (Chair)	
	Councillors	P Reisdorf L Fraser	J Crabtree
<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 and reported that this had resulted in hardship for at least one tenant with learning disabilities who had to seek assistance from the Welfare Fund to purchase clothing. Mr Morton also quoted from a February 2004 e-mail, which he stated clearly showed that two senior managers in Adult Social Services were aware that the 'special charging policy' was unfair and that the domiciliary care charging policy should have applied since 1997.

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.

Members expressed substantial concerns about the events that had resulted in the last minute finding of the report to the Social Services Committee on 3 September 1997 entitled 'Report on Future Services for People with Learning Disabilities', which showed the approval of the charging policy. 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-imbusement 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-imbusement 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-imbusement 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.**

The Chair asked Mr Morton whether he wished to make any final remarks. At this point, Mr Morton made a detailed statement outlining his concerns with the Department of Adult Social Services and the treatment of him whilst an employee, including an allegation that he had been the victim of bullying.
